

# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

**No. 79**

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ROBERT L. PIERSON, ET AL., PETITIONERS,

*vs.*

J. L. RAY, ET AL.

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**No. 94**

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J. L. RAY, ET AL., PETITIONERS,

*vs.*

ROBERT L. PIERSON, ET AL.

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

No. 3315

**ROBERT L. PIERSON, JOHN B. MORRIS, JAMES P. BREEDEN,  
and JAMES G. JONES, JR., Plaintiffs,**

**v.**

**J. L. RAY, J. B. GRIFFITH, D. A. NICHOLS, and  
JAMES L. SPENCER, Defendants.**

**COMPLAINT—Filed September 10, 1962**

**Jurisdiction:**

1. Jurisdiction is based upon 28 U.S.C. 1343 and 42 U.S.C. 1981 and 1983 and upon 28 U.S.C. 1332.
2. Each Plaintiff has been damaged in an amount greater than \$10,000.00, exclusive of interest and costs.

**Nature of Cause of Action:**

3. This cause of action is a civil action for damages for deprivation of civil rights and for false arrest and imprisonment of Plaintiffs by Defendants.

**Plaintiffs:**

4. Plaintiff Robert L. Pierson is an adult male, an Episco-  
[fol. 3] pal Clergyman, a member of the Caucasian race,  
and a citizen of the State of New York.
5. Plaintiff John B. Morris is an adult male, an Episcopal  
Clergyman, a member of the Caucasian race, and a citizen  
of the State of Georgia.

6. Plaintiff James P. Breeden is an adult male, an Episcopal Clergyman, a member of the Negro race, and a citizen of the State of Massachusetts.

7. Plaintiff James G. Jones, Jr., is an adult male, an Episcopal Clergyman, a member of the Caucasian race, and a citizen of the State of Illinois.

**Defendants:**

8. Defendant J. L. Ray is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

9. Defendant J. B. Griffith is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

10. Defendant D. A. Nichols is a policeman and a member of the police force of the City of Jackson, Mississippi, and resides in Jackson, Mississippi, and is a citizen of Mississippi.

11. Defendant James L. Spencer is the police justice and ex-officio Justice of the Peace of the City of Jackson, Mississippi, [fol. 4] and resides in Jackson, Mississippi, and is a citizen of the State of Mississippi.

**The Factual Situation:**

12. On September 13, 1961, Plaintiffs and eleven other Episcopal Clergymen, amongst whom were two members of the Negro race and nine members of the Caucasian race, traveling in a group on a Prayer Pilgrimage, entered in orderly fashion the Continental Trailways Bus Station in Jackson, Mississippi, about 11:30 A.M. for the purpose of continuing their journey from New Orleans, Louisiana, to Detroit, Michigan to the General Convention of their Church. All possessed tickets to Chattanooga, Tennessee

at such time. The group entered through a front door of the station, in front of which was a sign stating in substance "White Waiting Room Only—By Order of Police Department."

13. After Plaintiffs and the other Clergymen referred to above entered the station Defendants Griffith and Nichols placed Plaintiffs and the others under arrest, after ordering them to move on and after refusal by Plaintiffs and the others to do so.

14. Thereafter Defendant Ray approached Plaintiffs and told them to move on. Plaintiffs refused to do so and were then placed under arrest by Defendant Ray and taken to the Jackson City jail.

15. At no time was there any unusual gathering, occurrence, or circumstances in or near the vicinity of the bus station at or near the time of the arrest of Plaintiffs nor did any person present, including Plaintiffs, create any [fol. 5] disturbance or commit any disorderly acts whatever.

16. Plaintiffs Pierson, Morris, and Breeden were held in jail until Tuesday, September 19, 1961.

17. Plaintiff Jones was held in jail for approximately ten days after the other Plaintiffs were released.

18. Plaintiffs were held, tried, and convicted upon affidavits of Defendant Ray alleging that Plaintiffs "on or about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississippi, under such circumstances that a breach of the peace might have been occasioned thereby, did then and there congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there willfully and unlawfully fail or refused



to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi."

19. Defendant Spencer was the judge at the trial held on Friday, September 15, 1961, without a jury at which trial Plaintiffs were tried and convicted on the affidavits mentioned in paragraph 18, supra, and on the testimony of [fol. 6] Defendant Ray. The convictions were based upon violations of Section 2087.5 of the Mississippi Code of 1942, as amended.

20. Plaintiffs Pierson, Morris, and Breeden posted bond and were released from jail on Tuesday, September 19, 1961. Plaintiff Jones posted bond and was released from jail approximately ten days after the other Plaintiffs.

21. The Plaintiffs duly appealed to the Hinds County Court from the Jackson Municipal Court as provided by Mississippi laws. As a necessary consequence of prosecuting their appeals Plaintiffs were required to appear in the Hinds County Court before County Judge Russell Moore for arraignment on October 9, 1961, at which time they pleaded not guilty. Thereafter, on April 10, 1962 Plaintiffs Morris, Pierson, and Breeden were required to return to Jackson for further purposes of prosecuting their appeals. On May 21, 1962 the trial of Plaintiff Jones was held before Judge Moore. At the end of the prosecution's evidence, at which Defendant Griffith testified, the Court, upon Plaintiff Jones's motion, dismissed the case on the grounds that the evidence showed no violation of law. Immediately thereafter the City Prosecutor moved the dismissal of charges against the other Plaintiffs and the eleven other Clergymen referred to above, stating that the evidence in the remaining cases was the same as in the Jones case. This motion was granted.

[fol. 7] Claim I:

22. Defendants, acting severally and in concert, under color of law and under color of Section 2087.5 of the Mississippi Code of 1942, as amended, and under color of the Constitution, laws, policy, customs and usages of the State of Mississippi dealing with segregation of the Negro race from the Caucasian race, subjected and caused to be subjected Plaintiffs to the deprivation of rights, privileges and immunities secured by the Constitution and laws of the United States in that Defendants have arrested, convicted and sentenced Plaintiffs to jail and confined Plaintiffs therein for the sole purpose of enforcing the segregation laws, customs, policies, and usages of the State of Mississippi.

23. Plaintiffs have been deprived of their rights, privileges, and immunities as citizens of the United States and of the several States to travel freely among the States of the United States, to equal protection of the laws, and to due process of law, among other rights, privileges, and immunities guaranteed by the Constitution and laws of the United States. These rights, privileges, and immunities are guaranteed, in particular, by Article I, Section 8, Clause 3, and the 14th Amendment of the Constitution of the United States and laws passed pursuant thereto.

Claim II:

24. Plaintiffs have been intentionally falsely arrested, con-[fol. 8] fined, detained, and imprisoned by Defendants, acting severally and in concert, without legal cause, process, or justification. At no time about the occasion of their arrests did the Plaintiffs commit any acts justifying their arrests by Defendants Ray, Griffith, and Nichols or their convictions by Defendant Spencer under the section of the Mississippi law with which Plaintiffs were charged with violating, Section 2087.5, or under any of the other laws of the State of Mississippi.

**Statement of Damages:**

25. Plaintiffs have each been injured and damaged by Defendants' acts against Plaintiffs in the amount of \$10,001.00 for each Plaintiff and each Plaintiff has further been forced to expend the sum of, approximately \$1,000.00 as a direct and proximate result of protecting and defending himself against the acts of Defendants.

**Prayer for Relief:**

26. Wherefore, each Plaintiff demands judgment against Defendants, jointly and severally, in the amount of \$11,001.00, for a total judgment against Defendants of \$44,004.00.

27. Plaintiffs request such other and further relief as is just.

28. Plaintiffs demand that Defendants pay the cost of this action.

Carl Rachlin, 280 Broadway, New York, New York;  
William Higgs, Box 4863, Jackson 6, Mississippi;  
Attorneys for Plaintiffs.

[fol. 9] William Higgs, One of the Attorneys of  
Record in this cause and a member of the bar of  
this Court.

...

(Summons and Return are not copied here.)

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**IN UNITED STATES DISTRICT COURT**

**MOTION OF DEFENDANT, JAMES L. SPENCER, TO DISMISS THE  
COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID  
DEFENDANT FROM THE ACTION—Filed September 29,  
1962**

Now Comes James L. Spencer, one of the defendants  
in the above styled and numbered action, by his attorneys,  
and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case, upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

E. W. Stennett, City Attorney, Jackson, Mississippi;

[fol. 10] Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,  
Attorneys for Defendant.

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IN UNITED STATES DISTRICT COURT

MOTION OF THE DEFENDANT, J. L. RAY, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION—Filed September 29, 1962

Now Comes J. L. Ray, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case, upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

E. W. Stennett, City Attorney, Jackson, Mississippi;

[fol. 11] Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,  
Attorneys for Defendant.



**IN UNITED STATES DISTRICT COURT**

**MOTION OF DEFENDANT, D. A. NICHOLS, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION—Filed September 29, 1962**

Now Comes D. A. Nichols, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case, upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

**E. W. Stennett, City Attorney, Jackson, Mississippi;  
[fol. 12] Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, by Thos. H. Watkins,  
Attorneys for Defendant.**

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**IN UNITED STATES DISTRICT COURT**

**MOTION OF THE DEFENDANT, J. D. GRIFFITH, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO DROP SAID DEFENDANT FROM THE ACTION—Filed September 29, 1962**

Now Comes J. D. Griffith, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court as follows:

1. Pursuant to Rules 18 and 20 of the Federal Rules of Civil Procedure, to dismiss the complaint upon the ground that there is a misjoinder of claims in the complaint.

2. Pursuant to Rules 20 and 21 of the Federal Rules of Civil Procedure, to drop this defendant from the case,

upon the grounds that there is a misjoinder of parties defendant in the complaint, and that this defendant is improperly joined.

E. W. Stennett, City Attorney, Jackson, Mississippi;  
[fol. 13] Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,  
Attorneys for Defendant.

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IN UNITED STATES DISTRICT COURT

DEFENDANTS' MOTION AND AFFIDAVIT FOR SECURITY  
FOR COSTS—Filed October 1, 1962

Now Come the defendants in the above styled and numbered action, by their attorneys, and respectfully move the Court to require the plaintiffs, and each of them, to give security for all costs accrued and to accrue in this action within 60 days after an order of the Court made for that purpose, and in support thereof would show unto the Court the following:

1. That each of the plaintiffs is a nonresident of the State of Mississippi, and that plaintiffs have not, as defendants believe, sufficient property in this State out of which the costs can be made if adjudged against plaintiffs.

2. That defendants have, as they believe, a meritorious defense and that this motion and affidavit are not made for delay.

Wherefore, defendants respectfully move the Court to require the plaintiffs to give security for all costs accrued [fol. 14] and to accrue in this action within 60 days after an order of the Court made for that purpose, and that if the security be not given, as required by said order, this action be dismissed.

J. L. Ray, J. D. Griffith, D. A. Nichols and James L. Spencer;

By: E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,  
Attorneys for Defendants.

*Duly sworn to by J. L. Ray, J. D. Griffith, D. A. Nichols  
and James L. Spencer, jurats omitted in printing.*

[fol. 15]

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING OF DEFENDANTS' MOTIONS FOR SECURITY  
FOR COSTS AND TO DISMISS—Filed October 12, 1962.

The plaintiffs and their attorneys of record will please take notice that the defendants will present their joint motion for security for costs and their separate motions to dismiss or to drop each defendant from the action to the District Court of the United States for the Southern District of Mississippi in the U. S. District Courtroom on the Fifth Floor of the Federal Post Office Building, Jackson, [fol. 16] Mississippi, at 9:00 a.m. on Friday, November 2, 1962, or as soon thereafter as counsel can be heard.

E. W. Stennett, City Attorney, Jackson, Mississippi;  
Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins,  
Attorneys for Defendants.

IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING OF DEFENDANTS' MOTIONS FOR SECURITY  
FOR COSTS AND TO DISMISS—Filed November 8, 1962

The plaintiffs and their attorneys of record will please take notice that the defendants will present their joint motion for security for costs and their separate motions to dismiss or to drop each defendant from the action to the

District Court of the United States for the Southern District of Mississippi in the U. S. District Courtroom on the Fifth Floor of the Federal Post Office Building, Jackson, Mississippi, at 9:00 a.m. on Friday, November 30th, 1962, or as soon thereafter as counsel can be heard.

[fol. 17] E. W. Stennett, City Attorney, Jackson, Mississippi;

Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins, Attorneys for Defendants.

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT, JAMES L. SPENCER, TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT—Filed November 19, 1962

Now Comes James L. Spencer, one of the defendants in the above styled and numbered action, by his attorneys, and respectfully moves the Court to dismiss the complaint as to said defendant and as grounds therefor would show unto the Court the following:

1. The complaint does not state a claim upon which relief may be granted as against said defendant.
2. The complaint affirmatively shows that said defendant, in committing the acts complained of, was the duly appointed, qualified and acting City Court Judge and ex-officio Justice of the Peace, and as such had complete jurisdiction over the plaintiffs and the alleged offense committed by them within the territorial jurisdiction of the [fol. 18] Court, and that said defendant, therefore, is immune to civil liability for the matters set out in said complaint.

E. W. Stennett, City Attorney, Jackson, Mississippi;  
Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, By Thos. H. Watkins, Attorneys for Defendant.



**IN UNITED STATES DISTRICT COURT****MOTION FOR DEFAULT JUDGMENT—Filed November 23, 1962**

Plaintiffs hereby move the Court for a default judgment against the Defendants in this cause, J. L. Ray, J. B. Griffith, D. A. Nichols, and James L. Spencer, for the reason that they have failed to plead or defend as provided by the Federal Rules of Civil Procedure.

The Court is respectfully referred to Rules 55 and 12 of the Federal Rules of Civil Procedure.

More than 20 days have passed since the service of summons and complaints upon all Defendants, and neither answers nor motions provided for in Rule 12 were filed within said time.

Plaintiffs have filed with the Clerk a Motion To Clerk To [fol. 19] Enter Default Against Defendants Under Rule 55(a).

Carl Bachlin, 280 Broadway, New York, New York;  
William L. Higgs, Box 4863, Jackson 6, Mississippi,  
By William L. Higgs,  
Attorneys for Plaintiffs.

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**IN UNITED STATES DISTRICT COURT****MOTION TO CLERK TO ENTER DEFAULT AGAINST DEFENDANTS  
UNDER RULE 55(a)—Filed November 23, 1962**

Plaintiffs hereby move the Clerk to enter the default of the Defendants in this cause, J. L. Ray, J. B. Griffith, D. A. Nichols, and James L. Spencer, for the reason that they have failed to plead or defend as provided by the Federal Rules of Civil Procedure.

The Clerk is respectfully referred to Rules 55(a) and 12 of the Federal Rules of Civil Procedure.

More than 20 days have passed since the service of summons and complaints upon all Defendants, and neither

answers nor motions provided for in Rule 12 were filed within said time.

[fol. 20] Carl Rachlin, 280 Broadway, New York,  
New York;

William L. Higgs, Box 4863, Jackson 6, Mississippi,  
By William L. Higgs,  
Attorneys for Plaintiffs.

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- IN UNITED STATES DISTRICT COURT

DEFENDANT'S ANSWER—November 30, 1962

Now Come the defendants in the above styled and numbered action, by their attorneys, without waiving their rights jointly or severally under the motions heretofore filed by said defendants herein, and for answer to the complaint exhibited against them herein would show unto the Court the following:

1. Defendants deny that any of the statutes referred to in paragraph 1 of the complaint are applicable and deny that this Court has jurisdiction over the persons of the defendants or the subject matter of the complaint.

2. Defendants deny the allegations of paragraph 2.

3. Defendants deny that the plaintiffs, or any of them, [fol. 21] have a civil action for damages for deprivation of civil rights or for false arrests or imprisonment of plaintiffs by defendants.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted.

8. Admitted.

9. Admitted.

10. Admitted.

11. Admitted.

12. Defendants admit that on or about September 13, 1961, the plaintiffs and others entered the Continental Trailways Bus Station in Jackson, Mississippi, at about 11:30 a. m., but deny each and every other allegation of paragraph 12 of the complaint.

13. Admitted.

14. Admitted.

15. Defendants deny each and every allegation contained in paragraph 15 of the complaint.

16. Defendants deny that plaintiffs, Pierson, Morris and Breeden, were held in jail until Tuesday, September 19, 1961, if by that allegation plaintiffs intend to allege that they were denied the right to obtain their freedom by posting reasonable bonds. Defendants would show further that said plaintiffs remained in jail and refused to post [fol. 22] reasonable bonds intentionally for the purpose of obtaining publicity incident to their presence in jail.

17. Defendants deny that the plaintiff Jones was held in jail for approximately ten days after the other plaintiffs were released if by that allegation said plaintiff intends to allege that he was denied the right to obtain his freedom by posting reasonable bond. Defendants would further show that said plaintiff remained in jail and refused to post a reasonable bond intentionally for the purpose of obtaining publicity incident to his presence in jail.

18. Defendants deny the allegations of paragraph 18 of the complaint except that they admit that said paragraph correctly quotes a part of the affidavit on which plaintiffs were subsequently tried.

19. Defendants admit the allegations of paragraph 19 of the complaint, but would show unto the Court that each of the plaintiffs was represented by competent legal counsel

at said trial and that none of the plaintiffs requested trial by jury.

20. Defendants admit the allegations of paragraph 20, but would show unto the Court that said plaintiffs could have obtained their release any time after their arrest by posting reasonable bonds.

21. Defendants admit that plaintiffs appealed their cases to the County Court of the First Judicial District of Hinds County, Mississippi, and that on or about May 21, 1962, said cases were dismissed by the Judge of said Court, but deny all other allegations of paragraph 21 of the complaint [fol. 23] plaintiff.

22. Defendants deny each and every allegation contained in paragraph 22 of the complaint.

23. Defendants deny each and every allegation contained in paragraph 23 of the complaint.

24. Defendants deny each and every allegation contained in paragraph 24 of the complaint.

25. Defendants deny each and every allegation contained in paragraph 25 of the complaint.

26. Defendants deny that plaintiffs are entitled to recover any amount of or from any of the defendants.

27. Defendants deny that any of the plaintiffs is entitled to any relief.

28. Defendants deny that the costs should be taxed against said defendants, or any of them.

29. Defendants would further show unto the Court that if said defendants committed the acts complained of, which is specifically denied, such action on the part of the defendants, and each of them, is immune to civil liability to the plaintiffs in this action for the reason that the defendants, Ray, Griffith and Nichols, were duly appointed, qualified and acting police officers of the City of Jackson, Missis-



issippi, and the defendant Spencer was the duly appointed, qualified and acting City Court Judge and ex-officio justice [fol. 24] of the peace of the City of Jackson, Mississippi, and that each act committed by said defendants with respect to the plaintiffs, and each of them, was an official act of an officer or judge requiring the exercise of reasonable judgment which cannot be made the basis of this action for civil liability.

Defendants request a jury trial.

E. W. Stennett, City Attorney, Jackson, Mississippi;  
Watkins & Eager, 800 Plaza Building, Jackson,  
Mississippi, By Thos. H. Watkins,  
Attorneys for Defendants.

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IN UNITED STATES DISTRICT COURT

NOTICE OF HEARING OF DEFENDANTS' MOTIONS FOR SECURITY  
FOR COSTS AND TO DISMISS—Filed December 3, 1962

The plaintiffs and their attorneys of record will please take notice that the defendants will present their joint motion for security for costs and their separate motions to dismiss or to drop each defendant from the action to the District Court of the United States for the Southern District of Mississippi in the U. S. District Courtroom on [fol. 25] the Fifth Floor of the Federal Post Office Building, Jackson, Mississippi, at 9:00 a.m. on Friday, December 21, 1962, or as soon thereafter as counsel can be heard.

E. W. Stennett, City Attorney, Jackson, Mississippi;  
Watkins & Eager, 800 Plaza Building, Jackson,  
Mississippi, By Thos. H. Watkins,  
Attorneys for Defendants.

**IN UNITED STATES DISTRICT COURT****NOTICE OF HEARING OF DEFENDANTS' MOTIONS FOR SECURITY  
FOR COSTS AND TO DISMISS—Filed December 5, 1962**

The plaintiffs and their attorneys of record will please take notice that the defendants will present their joint motion for security for costs and their separate motions to dismiss or to drop each defendant from the action to the District Court of the United States for the Southern District of Mississippi in the U.S. District Courtroom on the Fifth Floor of the Federal Post Office Building, Jackson, Mississippi, at 9:00 a.m. on Friday, January 4, 1963, or as soon thereafter as counsel can be heard.

[fol. 26]

E. W. Stennett, City Attorney, Jackson, Mississippi;  
Watkins & Eager, 800 Plaza Building, Jackson,  
Mississippi, By Thos. H. Watkins,  
Attorneys for Defendants.

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**IN UNITED STATES DISTRICT COURT****ORDER SUSTAINING DEFENDANTS' MOTION FOR SECURITY  
FOR COSTS—January 4, 1963**

This Day this action came on for hearing on the motion of the defendants to require the plaintiffs to give security for costs accrued and to accrue in this action, and the Court having considered same, is of the opinion that said motion should be sustained.

It is, therefore, ordered and adjudged that each of the plaintiffs is hereby ordered and directed to give security for costs in this action in the amount of \$500.00 either in cash or by corporate surety bond to be approved by the Clerk of this Court, and that said security for costs shall be filed with the Clerk of this Court within fifteen (15) days from this date, and that if one or more of the plaintiffs

fail to give security for costs in accordance with this order [fol. 27] within the time required, this action shall be dismissed as to such plaintiff or plaintiffs.

Ordered and Adjudged, this 4th day of January, 1963.

Harold Cox, United States District Judge.

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IN UNITED STATES DISTRICT COURT

ORDER OVERRULING PLAINTIFFS' MOTION FOR DEFAULT  
JUDGMENT—January 4, 1963

This Day this action came on for hearing on plaintiffs' motion for default judgment against the defendants, and the Court having considered same, is of the opinion that said motion should be overruled.

It is, therefore, ordered and adjudged that said motion be and the same is hereby overruled.

Ordered and Adjudged, this 4th day of January, 1963.

Harold Cox, United States District Judge.

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[fol. 28]

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING SEPARATE MOTION OF EACH DEFENDANT  
TO DISMISS THE COMPLAINT AS TO SAID DEFENDANT OR TO  
DROP SAID DEFENDANT FROM THE ACTION—January 4,  
1963

This Day this action came on for hearing on the separate motion of each defendant to dismiss the complaint as to said defendant upon the ground that there is a misjoinder of claims or to drop each defendant from the case upon the ground that there is a misjoinder of parties defendant, and the Court having considered same, is of the opinion that said motions, and each of them, should be overruled.

It is, therefore, ordered and adjudged that said motions, and each of them, be and the same are hereby overruled.

Ordered and Adjudged, this 4th day of January, 1963.

Harold Cox, United States District Judge.

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IN UNITED STATES DISTRICT COURT

NOTICE BY THE DEFENDANTS OF THE TAKING OF THE DEPOSITIONS OF THE PLAINTIFFS AS ADVERSE PARTIES UNDER RULE 26—Filed January 15, 1963

The plaintiffs and their Attorneys of Record will please take notice that the defendants will take the depositions [fol. 29] of the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., as adverse parties in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, for purposes of discovery and for use as evidence in this case pursuant to Rule 26 of the Federal Rules of Civil Procedure on Friday, February 15, 1963, and that the taking of said depositions will commence at 8:00 o'clock a.m. on said date and will be continued until the taking thereof shall have been completed.

E. W. Stennett, City Attorney, Jackson, Mississippi;  
Watkins & Eager, 800 Plaza Building, Jackson,  
Mississippi, By Thos. H. Watkins,  
Attorneys for Defendants.

...

Letter to Miss Wharton from Mr. Carl Rachlin, is not copied here.



## IN UNITED STATES DISTRICT COURT

ORDER ON MOTION OF JAMES L. SPENCER  
TO DISMISS—January 24, 1963

This Cause coming on to be heard on motion of defendant, [fol. 30] James L. Spencer, to dismiss the complaint of the plaintiffs against him because of his judicial immunity for the acts complained of, and even though the exemptions of a judge are not dependent upon the motives which prompted his judicial action as stated in *Bradley v. Fisher*, 80 S. Ct. 646, in the absence of some supporting testimony or affidavits, the Court is unable to determine the question thus presented and is of the opinion that such motion should thus be carried along and decided with the case.

It Is, Therefore, So Ordered And Adjudged by the Court that action on said motion of James L. Spencer to dismiss is deferred for decision and action thereon in the trial of this case on its merits.

So Ordered, this January 24, A. D., 1963.

Harold Cox, United States District Judge.

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Copy of letter from Judge Cox to Mr. Carl Rachlin is not copied here.

[fol. 31]

## CERTIFICATE OF DEPOSIT FOR CHECKING ACCOUNT

Deposited	Deposit No.
with First National Bank, Jackson, Miss.	25
(Name and location of depository)	1-31-63
	(Date sent)
the sum shown opposite for credit,	
subject to check, in the disbursing	
account of—	\$1,000.00

Loryce E. Wharton, Clerk, U.S. District Court  
(Name and address of officer to be credited)

Symbol No. |

4724 |

On account of—

Registry Fund

(Depositor will insert below his name, title,  
Department or Agency concerned, and his  
address)

Loryce E. Wharton, Clerk  
U. S. District Court  
Southern District of Mississippi  
Jackson, Mississippi

**SPACE BELOW TO BE USED BY DEPOSITARY ONLY**

I certify that the above amount has been received for  
credit in the account of the Treasurer of the United States  
on the date shown, subject to adjustment for uncollectible  
items included therein.

First National Bank, Jackson, Miss.

By (Authorized signature) Teller

1-31-63 /s/ D MOORE

(Date of credit in Treasurer's account)

**DEPOSITOR WILL RETAIN THIS COPY**

(Information as found on reverse side of bond.)

Western Union Money Order No. RW10301 date 1-30-63

in amount of

\$1,000.00

paid into court by Rev. John B. Morris as  
bond for court costs in case;

Robert L. Pierson et al.

vs

J. L. Ray et al.

LP 273

Jackson 3315—Civil



**IN UNITED STATES DISTRICT COURT****NOTICE BY THE PLAINTIFFS OF THE TAKING OF THE DEPOSITIONS OF THE DEFENDANTS AS ADVERSE PARTIES UNDER RULE 26—Filed February 13, 1963**

The defendants and their Attorneys of Record will please take notice that the plaintiffs will take the depositions of [fol. 33] the defendants, J. L. Ray, J. B. Griffith, D. A. Nichols and James L. Spencer, as adverse parties in the offices of Watkins & Eager, 800 Plaza Building, Jackson, Mississippi, before Mildred A. Baker, Notary Public, for purposes of discovery and for use as evidence in this case pursuant to Rule 26 of the Federal Rules of Civil Procedure on Friday, February 15, 1963, and that the taking of said depositions will commence at 1:00 o'clock P.M. on said date and will be continued until the taking thereof shall have been completed.

William Higgs, Box 4863, Jackson 6, Mississippi;  
Carl Rachlin, 280 Broadway, New York 7, New  
York; By Carl Rachlin, Attorneys for Plaintiffs.

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**IN UNITED STATES DISTRICT COURT****DEFENDANTS' MOTION TO AMEND ANSWER—  
Filed May 13, 1963**

Now Come the defendants in the above styled and numbered action, by their attorneys, and respectfully move the Court to permit them to amend their answer filed herein by adding thereto the following:

[fol. 34] 30. Defendants would further show unto the Court that the defendants, Ray, Griffith, and Nichols, had probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested at the time of their arrests, and that the defendant, Spencer, had probable cause to believe that the plaintiffs were guilty of the



offense for which they were tried at the time of their conviction.

E. W. Stennett, City Attorney, Jackson, Mississippi;  
Watkins & Eager, 800 Plaza Building, Jackson,  
Mississippi; By Thos. H. Watkins, Attorneys for  
Defendants.

...

Depositions of J. L. Ray et al, are not copied here.

...

Depositions of Robert L. Pierson, et al, are not copied here.

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[fol. 35] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING AMENDMENT TO DEFENDANTS' ANSWER—  
May 13, 1963

This Action came on for hearing on the motion of the defendants to be permitted to amend their answer filed herein, and the Court having considered same, is of the opinion that said motion should be and the same is hereby sustained.

Ordered And Adjudged, this 13th day of May, 1963.

S. C. Mize, United States District Judge.

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IN UNITED STATES DISTRICT COURT

AMENDMENT TO DEFENDANTS' ANSWER—Filed May 13, 1963

Now Come the defendants in the above styled and numbered action, by their attorneys, and amend their answer filed herein by adding thereto the following:

30. Defendants would further show unto the Court, that the defendants, Ray, Griffith, and Nichols, had probable cause to believe that the plaintiffs were

guilty of the offense for which they were arrested at the time of their arrests, and that the defendant, Spencer, had probable cause to believe that the plain-[fol. 36] tiffs were guilty of the offense for which they were tried at the time of their conviction.

E. W. Stennett, City Attorney, Jackson, Mississippi;  
Watkins & Eager, 800 Plaza Building, Jackson,  
Mississippi; By Thos. H. Watkins, Attorneys for  
Defendants.

...

Civil Subpoena, not copied here.

[fol. 37]

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN  
DISTRICT OF MISSISSIPPI, JACKSON DIVISION  
Civil Action No. 3315

ROBERT L. PIERSON, JOHN B. MORRIS, JAMES P. BREEDEN and  
JAMES G. JONES, JR.,

versus

J. L. RAY, J. B. GRIFFITH, D. A. NICHOLS, JAMES L. SPENCER.

Transcript of Testimony—May 13, 1963

APPEARANCES:

Hon. Carl Rachlin, 280 Broadway, New York 7, N. Y.,  
and Hon. Harry L. Rosenthal, 242½ E. Capitol Street,  
Jackson, Mississippi, for plaintiffs.

Hon. Thomas H. Watkins, Plaza Building, Jackson, Mis-  
sissippi, and Hon. E. W. Stennett, County Court House  
Bldg., Jackson, Mississippi, for defendants.

Be It Remembered that on May 13, 1963, there came on for hearing at Jackson, Mississippi, in the Jackson Division of the Southern District of Mississippi, before the Honorable S. C. Mize and a jury, the above entitled and numbered cause, and upon the hearing of said cause the following proceedings were had and entered of record, to-wit:

[fol. 38]

#### COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Watkins: The defendants would like to take an order permitting a brief amendment to their answer. Copy has been furnished to counsel for the plaintiffs.

The Court: Any objections to the amendment, Mr. Rachlin?

Mr. Rachlin: Yes. We object, first, on the ground the amendment was submitted today. This case has been pending now for quite a few months. We held depositions on this case in February and the depositions to some extent were based on the pleadings as they stood at that time. In addition and perhaps more importantly, the proposed amendment as a matter of law is insufficient. In an action for false imprisonment, which is the gravamen for the complaint before us, there is another allegation with regard to violation of the civil rights laws of the United States—probable cause on the part of a defendant is no ground of defense. I have had incomplete time to check the law, and I have only done that in the interim since Mr. Watkins so kindly gave copy of the papers to me, but there is no doubt in my mind, from the very limited examination I have made—and we have checked the law the best we can—it is not a ground for defense. Even if it were accepted, I would have to move it be dismissed as a ground of defense. So for both those reasons, I ask it be denied.

The Court: Well, under the Rules of Civil Procedure, amendments must be liberally allowed on such reasonable terms as the Court sees proper, so I will overrule the ob-

jection and permit the amendment to be made; but I will [fol. 39] give you sufficient time to study it further if you need to—or to the extent of postponing the case to some future date, if it's necessary. If it is immaterial then, of course, it will be taken care of by proper construction; that is, if it is no defense, then it would be stricken, but if it is a defense, then it would be a question for the determination of the jury if the evidence warrants such. So I will permit the amendment to be made under those conditions; that is to say, if you want a postponement of the case, I will grant it.

Mr. Rachlin: I do not seek a postponement. I take exception to Your Honor's ruling, but Your Honor has the last say about these matters.

The Court: You may have the exception even though it is not necessary under the Rules of Civil Procedure.

Mr. Rachlin: I just wanted to emphasize that.

The Court: I understand.

Mr. Rachlin: I understand your ruling does not preclude me from making any motions with regard to this amended pleading during the course of the trial or any time prior to the ending of the case?

The Court: That is right, because if the evidence shows what the amendment alleges to portray, then if it is immaterial, it will be stricken; if it is material, it will go to the jury under proper instructions.

I believe a jury is called for in this case?

[fol. 40] Mr. Rachlin: Yes, sir.

Mr. Watkins: The defendants would like to invoke the rule.

The Court: Very well. Let all the witnesses come around and be sworn.

Mr. Rachlin: We have one witness, one probable witness, who is not present in the courtroom at this time, and I wonder if that might be taken into consideration?

The Court: Yes. If he comes into the courtroom, call the attention of the Court to it so he can go under the rule. If



he is not here until tomorrow morning, that will be perfectly all right.

(The rule was invoked)

(All witnesses were duly sworn)

Mr. Rachlin: Your Honor, they are all parties to the action.

Mr. Watkins: Yes, all parties.

The Court: Very well. Parties may remain in the courtroom.

#### VOIR DIRE PROCEEDINGS

Mr. Watkins: Your Honor, I must inform the Court that apparently three gentlemen don't understand Mr. Rachlin's question, because there are three gentlemen in the jury box who are acquainted with me. Apparently, they did not understand Mr. Rachlin's question.

Mr. Rachlin: Everything he said, Your Honor, was not on the record, and I think it should have been.

[fol. 41] The Court: Yes, I thought we were on the record.

Mr. Rachlin: Let me make a statement for the record.

The Court: Yes, sir.

Mr. Rachlin: At this time I move that the three gentlemen who indicated, at Mr. Watkins' suggestion, that they had some degree of acquaintanceship with him—the exact degree I don't know—and one of the gentlemen who indicated he knew Mr. Watkins also indicated that he knew Judge Spencer, so, accordingly, I ask that they be dismissed for cause, and state that this should be sufficient cause for dismissing them, and dismissed for cause, and I so move.

The Court: I will overrule the motion.

I am going to let you examine the jurors. I asked preliminary questions, and I will now let both sides ask questions of the jury. If there is any juror who is biased, you may challenge for cause.

Mr. Rachlin: May we ask the three jurors, since that was not on the record, if they would indicate their names for the record.

The Court: Yes, you three gentlemen who knew Mr. Watkins, please stand up and give your name to the Court Reporter.

A Juror: My name is Marvin Collum, First National [fol. 42] Bank, Jackson, Mississippi.

The Court: And your name?

A Juror: John Hart Asher.

The Court: And your name?

A Juror: L. W. Hollis.

The Court: You may question them now, Mr. Rachlin.

Mr. Rachlin: I know that the acoustics are not of the best. I have had prior experience. I wonder if I might turn my back to the rest of the courtroom, where I can be heard by you and Mr. Watkins and Mr. Stennett.

The Court: I think so.

Mr. Rachlin: I hope that anyone will speak up if they do not hear what I am saying.

Gentlemen of the Jury, my name is Carl Rachlin, as the Judge indicated a moment ago, and I am from New York, and my associate in this case is a Jackson attorney, Leonard H. Rosenthal, who has his office directly across the street.

As the Judge indicated, this is an action for false imprisonment. I am not certain that in the very brief summary of what the case was about that the Judge indicated, and it isn't terribly important now, because we are not arguing the merits of the case at this time, but on an appeal to the Hinds County Court they were acquitted by Judge [fol. 43] Moore of the offense for which they were charged and convicted before Judge Spencer. They are, therefore, coming into this court today and asking for damages for their arrest, their conviction and their detention in the County jail for a period of time, which will be described in some detail when the witnesses themselves testify. This is the nature of the action.

We will also claim, and I will mention why in a moment, but we also claim that the only reason they were arrested is because they were a group of twelve white and three Negro Episcopal clergymen.

We think the facts will demonstrate that they behaved in an absolutely orderly manner. As I say, this is not a time to argue the case, and I am not doing that; just outlining what this case is about.

Now, given that set of facts, is there anyone who feels that he could not render a fair verdict because four persons from the State of Massachusetts, New York, Illinois and Georgia are suing four residents of Jackson, Mississippi?

Is there any reason why you think that fact of four non-Mississippians suing four Mississippians would influence your judgment against the Plaintiffs in any way? Is there anybody here who feels he could not under those circumstances render a fair verdict?

I take it from the silence that all of you think that you [fol. 44] could render a fair verdict if the facts warranted for the Plaintiffs, in whatever amount of damages may be warranted by the facts.

Now, is there any reason why you could not render a verdict if the facts so warranted against the three of the four Defendants because they are policemen? Would that in any way affect your judgment? For example, do you feel that a policeman is always right, never makes a mistake, or that he has a right to make an arrest if he wants to? Is there anybody here that feels that because the Defendants are policemen that he could not render a fair and just verdict? If the facts so warranted, you could find a verdict for the Plaintiff, is that right, gentlemen?

Now, does the fact that the four Plaintiffs are Episcopalians cause any doubt in your mind as to whether you could or not render a fair verdict in this case? Is there anyone sitting here who feels this may be a factor which may influence his judgment in some way?

I take it, again, from your silence that all of you feel that would not influence you.

Is there anyone here who feels that because this was a group of twelve white men and three Negro clergymen that this would be a factor which would so influence your judgment that you could not render a fair and honest verdict; that these were people who were traveling, as the evidence will later show, from New Orleans to their Church convention [fol. 45] in Detroit, Michigan, and were traveling together, twelve white and three Negroes, is this a fact which would influence you in your judgment in some way for or against them?

Your name is what?

Juror: J. F. Edwards.

Mr. Rachlin: Mr. Edwards, I wonder if you mind telling me your occupation.

Juror: Dairy farmer.

Mr. Rachlin: You probably understand me with as much difficulty as I understand you. So we will call it square. You have dairy cattle?

Juror: Yes, sir.

Mr. Rachlin: How far from Jackson?

Juror: Ninety-six miles.

Mr. Rachlin: How big a farm?

Juror: Hundred and sixty acres.

Mr. Rachlin: How many head of cattle?

Juror: Eighty head.

Mr. Rachlin: You have been living around here for a long time?

Juror: All my life.

Mr. Rachlin: This has been your work all your life?

Juror: Yes, sir.

[fol. 46] Mr. Rachlin: Mr. Edwards, these Plaintiffs in a sense want to put themselves in your hands and ask—to use the popular term—a fair shake from you. They feel they have been falsely arrested and they feel that Judge Moore upheld them.

Do you think, if the facts warranted, you could find a verdict for them if you thought the evidence indicated that?



Juror: According to the law and evidence.

Mr. Rachlin: The fact that they were not residents of Mississippi, would that influence you?

Juror: No.

Mr. Rachlin: We are all residents of the United States, aren't we?

Juror: Yes, sir.

Mr. Rachlin: I take it that you have no prejudice against Episcopal clergy?

Juror: No, sir.

Mr. Rachlin: Now, Mr. Fletcher, do you mind telling me your occupation.

Juror: Comptroller with the Jackson Tile and Linoleum Company, Jackson.

Mr. Rachlin: Is this a distribution business?

Juror: Manufacturing business.

Mr. Rachlin: You manufacture here in Jackson?

[fol. 47] Juror: Yes, sir.

Mr. Rachlin: Do you ship all over the United States?

Juror: Just in the Southern states.

Mr. Rachlin: Do you live in Jackson?

Juror: Yes, sir, I live in Jackson.

Mr. Rachlin: How long have you lived here?

Juror: About eight years.

Mr. Rachlin: Where did you come from?

Juror: Ohio.

Mr. Rachlin: You gentlemen shouldn't mind me asking these questions. Maybe some day you will get a chance to ask me a lot of questions. It is part of the process of trying to understand the jury. Sometimes we have feelings in the back of our heads that we don't always, ourselves, appreciate; and all I am trying to do today at this moment is to make absolutely certain that the Plaintiffs and the Defendants, of course, too, receive an absolutely fair trial based upon the law and the facts and nothing more than that, just a square deal. In other words, is there anything about this case which would in some way make you feel you could not render a fair verdict?

The Juror: Not that I know of.

Mr. Rachlin: Any particular prejudice or bias or favor for the Defendants because they are residents of the City of Jackson?

The Juror: No.

[fol. 48] Mr. Rachlin: You think you could render a verdict against them if the evidence warranted it?

The Juror: I think I could give an objective verdict.

Mr. Rachlin: And you could find for the Plaintiff if you thought it was warranted?

The Juror: If warranted, yes, sir.

Mr. Rachlin: How long have you been with the Jackson Tile Company?

The Juror: Eight years.

Mr. Rachlin: Since you came to Jackson?

The Juror: Yes, sir.

Mr. Rachlin: Before that you lived in Ohio?

The Juror: Yes, sir.

Mr. Rachlin: Whereabouts?

The Juror: Jamesville, Ohio.

Mr. Rachlin: Did you live there for a long time?

The Juror: All my life.

Mr. Rachlin: And your name is—

The Juror: Garner.

Mr. Rachlin: What is your occupation?

The Juror: Farm and cattleman.

Mr. Rachlin: Both?

The Juror: Both.

[fol. 49] Mr. Rachlin: You sell cattle and also have a farm?

The Juror: Yes, sir.

Mr. Rachlin: What kind of a farm do you have?

The Juror: Cotton, corn, melons, such as that.

Mr. Rachlin: Are those cash crops, or your garden crops?

The Juror: Cash crops.

Mr. Rachlin: I was up in Alabama last week talking to some of the people and I found out much to my surprise

that cotton was still the big crop in Northern Alabama, too. I thought there was more diversification. How long have you had this farm?

The Juror: Ever since my daddy died in 1923.

Mr. Rachlin: That is more than one or two years.

The Juror: Yes, sir.

Mr. Rachlin: I take it you must enjoy what you are doing.

The Juror: Yes, sir.

Mr. Rachlin: How far is your farm from Jackson?

The Juror: About 63 miles.

Mr. Rachlin: Which direction?

The Juror: Southeast.

Mr. Rachlin: What is the nearest town?

The Juror: Mount Olive.

Mr. Rachlin: Mr. Garner, you know these Plaintiffs want [fol. 50] to put themselves in your hands and ask for a fair verdict. Does the fact that three are from the North and one a Georgian, would that influence you?

The Juror: No, sir.

Mr. Rachlin: You feel you are a citizen of the United States as well as a citizen of the State of Mississippi?

The Juror: Yes, sir.

Mr. Rachlin: Could you find a verdict for the Plaintiffs if you thought the facts and the law, as the Judge will give it to you sometime before the end of the trial, warranted it?

The Juror: Yes, sir.

Mr. Rachlin: It wouldn't trouble you because the Defendants are policemen?

The Juror: No, sir.

Mr. Rachlin: Do you think that a policeman ever makes a mistake?

The Juror: Well, everybody makes mistakes.

Mr. Rachlin: Do you feel that a citizen has the right to refuse to obey an illegal order of a policeman?

Mr. Watkins: We object to that. Counsel is interrogating a juror about whether he believes a person has a right

to disobey an illegal order of a policeman. That is a hypothetical question.

The Court: Yes, I sustain the objection to that question [fol. 51] because I think it is kind of a mixed kind of question of law and fact, and would have to be considered with the instructions of the Court after the facts are all in. I think that is an unnecessary and unauthorized question.

Mr. Rachlin: May I be heard on that?

The Court: Yes.

Mr. Rachlin: I think it goes to the heart of this case, whether a citizen has a right to refuse to obey an illegal order of a policeman, and if a juror, and this is no discredit upon the juror—

The Court: It depends on what the facts and background are.

Mr. Rachlin: Right.

The Court: I sustain the objection without further argument. You can't define it like, for instance, a citizen who has been enjoined from doing something, even though the injunction was illegal, and doesn't have any right to disobey the instructions. Without going into it in detail, I will hold that is an improper question.

I have already asked, and I will ask again: If you are accepted on the jury, will you follow the instructions of the Court as to what the law is?

The Juror: Yes, sir.

Mr. Rachlin: Thank you, Mr. Garner.

And you, sir, your name is—

[fol. 52] The Juror: James Shoemaker.

Mr. Rachlin: What is your occupation?

The Juror: Air-conditioning mechanic.

Mr. Rachlin: You are on the—

The Juror: The First National Bank.

Mr. Rachlin: You are on the Staff of the Bank?

The Juror: No, sir.

Mr. Rachlin: You are not a private contractor?

The Juror: No, sir, I work for the First National Bank—  
Air-conditioning operator.



Mr. Rachlin: Do you remember in September of 1961 when these Plaintiffs were arrested?

The Juror: I remember it, but I don't remember the day or month.

Mr. Rachlin: At that time did you form any opinion in your mind about whether they were guilty or innocent of the charges against them when they were arrested?

The Juror: Not to my knowledge, I didn't.

Mr. Rachlin: You have an open mind, is that right?

The Juror: Yes, sir.

Mr. Rachlin: How long have you lived in Jackson?

The Juror: I don't live in Jackson. I live 22 miles north of Jackson at Flora.

[fol. 53] Mr. Rachlin: How long have you lived there?

The Juror: All my life.

Mr. Rachlin: Did you go to school there?

The Juror: Flora High School.

Mr. Rachlin: You have heard the questions I have asked the other prospective jurors. Were you paying attention? Is there anything about this case that you feel would prevent you from rendering a fair and just verdict?

The Juror: I don't think so.

Mr. Rachlin: Sometimes there are things in the back of our minds that don't always show up right away, all of us, and this applies to me as much as to anybody else in this room. All of us carry around a few things that sometimes make you take a certain turn.

There's nothing about the case which will prevent you from rendering a verdict for the Plaintiffs if you thought the facts so warranted?

The Juror: No, sir.

Mr. Rachlin: And do you think a policeman is always right?

The Juror: No, sir.

Mr. Rachlin: Sometimes can be wrong?

The Juror: Yes, sir.

Mr. Rachlin: What is your name?

[fol. 54] The Juror: William Murtaugh.

Mr. Rachlin: I hope you won't mind if I ask your occupation.

The Juror: Pay Master Oil Mill Company.

Mr. Rachlin: I beg your pardon?

The Juror: Pay Master Oil Mill Company.

Mr. Rachlin: What does the company produce?

The Juror: They buy soybeans.

Mr. Rachlin: And you have been with them a long time?

The Juror: Five years.

Mr. Rachlin: Where are they located?

The Juror: About 75 miles north, at Tchula, Mississippi.

Mr. Rachlin: About how many men are employed there?

The Juror: Me, mostly. They have a place here.

Mr. Rachlin: They have an office in Jackson?

The Juror: Yes, all over the country.

Mr. Rachlin: This is what might be called nation-wide?

The Juror: Yes.

Mr. Rachlin: You have been involved in a lawsuit, yourself, ever?

The Juror: No, sir.

Mr. Rachlin: How do you feel about the question I asked some of the other prospective jurors, whether you think a [fol. 55] policeman is always right?

The Juror: No, I don't think they are always right.

Mr. Rachlin: You think they can make mistakes?

The Juror: Yes, sir.

Mr. Rachlin: If you think the policemen in this case made a mistake, and the Judge charges you under the law, are you prepared to award damages to the Plaintiffs based upon the mistake they made?

The Juror: Yes, sir.

Mr. Rachlin: I don't think the Judge is going to tell you what the facts are. The facts will have to be decided by you and other members of the jury. The Judge will merely instruct you as to his understanding of the law. You will be the sole judges of the facts in the case and nothing I say

nor anything Mr. Watkins says, and with all respects to this gentleman on my left, nothing he says can control your understanding of the facts in this case.

You will be the sole judges and you and your conscience and your God are the sole judges of the facts. Do you think that with that in mind you could render a fair verdict, and one for the Plaintiff if the facts so warranted?

The Juror: Yes, sir.

Mr. Rachlin: No doubt about it?

The Juror: No, sir.

Mr. Rachlin: Are you Mr. Boyer?

[fol. 56] The Juror: Lawrence E. Boyer.

I work for Ralston-Purina Company of Jackson, Mississippi.

Mr. Rachlin: I guess there isn't a person in the United States who doesn't know them. I know that on the radio in New York we hear about some of their newest products and much of it is made there, is that correct?

The Juror: Yes, sir.

Mr. Rachlin: What is your position?

The Juror: Accounting Manager.

Mr. Rachlin: Are you a certified public accountant?

The Juror: No, sir, not certified.

Mr. Rachlin: How long have you been with them?

The Juror: How long with the company?

Mr. Rachlin: Yes, sir.

The Juror: Be 26 years in August.

Mr. Rachlin: Did they give you a gold watch on your 25th year?

The Juror: No, sir.

Mr. Rachlin: A silver one, or get a medal?

The Juror: No, sir, they gave me some stock.

Mr. Rachlin: That shows real appreciation.

Mr. Boyer, you have heard all the questions I have asked, [fol. 57] and I don't want to repeat them. Is there anything from the questions I have asked all these gentlemen which would cause you to have your conscience stirred by sitting on a jury in a thing of this kind?

The Juror: No, sir.

Mr. Rachlin: If I were to ask you, do you think that a policeman is always right—

The Juror: I would say everybody makes mistakes.

Mr. Rachlin: Including policemen?

The Juror: Everybody.

Mr. Rachlin: Are you Mr. Webb?

The Juror: No, sir. My name is Arthur Strong.

Mr. Rachlin: Is it S-t-r-o-n-g?

The Juror: Strong.

Mr. Rachlin: What is your occupation?

The Juror: Parts Store Manager, automobile parts.

Mr. Rachlin: What is the name of the company?

The Juror: Brooks-Noble Auto Parts.

Mr. Rachlin: Do you live here in Jackson?

The Juror: No, sir, Canton.

Mr. Rachlin: Did you go to school there?

The Juror: Yes, sir.

Mr. Rachlin: Lived there all your life?

[fol. 58] The Juror: Yes, sir.

Mr. Rachlin: How far is that from Jackson?

The Juror: Thirty miles.

Mr. Rachlin: I hope you don't mind, because I don't know. As often as I have been to Jackson, I haven't gotten to other parts of the State. I take it you don't know any of the defendants in this case?

The Juror: No, sir.

Mr. Rachlin: You have no feelings about them one way or the other?

The Juror: No, sir.

Mr. Rachlin: Do you think, asking yourself as honestly as any person is capable of asking himself, that you could render a verdict for the Plaintiffs if the facts so warranted?

The Juror: Yes, sir.

Mr. Rachlin: You don't feel any peculiarities because they are non-residents of the State of Mississippi?

The Juror: No, sir.



Mr. Rachlin: This is a very touchy question, but nevertheless, part of the facts in here, and would the fact that in this group that went into the Continental Trailways station only a few blocks from here that there were 12 white and 3 Negro clergymen, would that influence you?

The Juror: No, sir.

[fol. 59] Mr. Rachlin: Would you think they had a right to do that?

Mr. Watkins: What was that question?

Mr. Rachlin: "Do you think they have a right to be together?"

Mr. Watkins: He is asking a juror a legal question.

The Court: Sustain the objection.

Mr. Rachlin: I wasn't aware it was a legal question.

Mr. Watkins: It certainly is a legal question.

The Court: It could be, because whether he has a right to be there is a question of law under certain circumstances.

I will instruct the jury at the proper time what the law is.

If you are accepted on this jury, will you take the instructions I give you as the law of the case and follow those instructions as the law in the case?

The Juror: Yes, sir.

Mr. Rachlin: Now, sir, would you mind telling me your name.

The Juror: Roy C. Davis.

Mr. Rachlin: D-a-v-i-s?

The Juror: Yes, sir.

Mr. Rachlin: And the first name?

The Juror: Roy.

[fol. 60] Mr. Rachlin: Roland?

The Juror: No, Roy.

Mr. Rachlin: Do you live in Jackson?

The Juror: Canton.

Mr. Rachlin: Do you two gentlemen know each other?

The Juror: Yes, sir.

Mr. Rachlin: The fact that you know each other, would that influence any decision you might make one way or the other?

The Juror: No, sir.

Mr. Rachlin: Would this be a disturbing fact, to find somebody from your immediate community on the same jury with you?

The Juror: No, sir.

Mr. Rachlin: I don't know, but, obviously, at this point nobody knows what conclusions one is going to come to about the case, but do you think if you and he were on opposite sides of the case you could hold out for your side if it was right?

The Juror: Yes, sir.

Mr. Rachlin: It wouldn't disturb you that your home town associate or a person that you know—

The Juror: No, sir.

Mr. Rachlin: I don't want to burden you by repeating myself a good deal. You heard me asking these other gentlemen these questions, and is there anything about the case [fol. 61] that you think would prevent you from rendering a fair or a just verdict?

The Juror: No, sir.

Mr. Rachlin: What is your occupation?

The Juror: Farmer.

Mr. Rachlin: What kind of farmer?

The Juror: Cattle—a cow farm.

Mr. Rachlin: Do you have a garden?

The Juror: Cotton.

Mr. Rachlin: Do you have a garden, too?

The Juror: Yes.

Mr. Rachlin: You have been living on that farm for a long time?

The Juror: All my life.

Mr. Rachlin: Did your father have it before you?

The Juror: Yes, sir.

Mr. Rachlin: It has been in your family a long time?

The Juror: Yes, sir.

Mr. Rachlin: How big a farm is it?

The Juror: Twenty-seven acres.

Mr. Rachlin: Most of it is in cotton?

The Juror: Yes, sir.

Mr. Rachlin: Tell me your name.

[fol. 62] The Juror: Boyd.

Mr. Rachlin: And your full name?

The Juror: Elmer Boyd.

Mr. Rachlin: Are you a machinist?

The Juror: No, I work in the production plant.

Mr. Rachlin: Do you install windows and screens, storm doors and screens?

The Juror: Yes, sir.

Mr. Rachlin: Do you sell these up North?

The Juror: Sell a great deal of them up North.

Mr. Rachlin: Where do you live?

The Juror: East of McComb City.

Mr. Rachlin: How close to McComb?

The Juror: Fourteen miles.

Mr. Rachlin: Did you go to McComb often?

The Juror: Yes, sir.

Mr. Rachlin: May I ask your name, sir?

The Juror: L. W. Hollis.

Mr. Rachlin: Mr. Hollis, you were one of the gentlemen Mr. Watkins indicated that you know Mr. Watkins.

The Juror: Yes, sir.

Mr. Rachlin: I wonder if I might try, but we are trying to find a fair and impartial jury and nothing I say is to cast aspersions on you. I wonder if you could tell us the [fol. 63] extent of Mr. Watkins' acquaintance with you.

The Juror: It goes back many years.

Mr. Rachlin: How often, in the course of time, do you see him?

The Juror: Our offices are in the same building.

Mr. Rachlin: You also have association?

The Juror: Yes, sir.

Mr. Rachlin: Your families visit each other?

The Juror: No, sir.

Mr. Rachlin: Occasionally have dinner with them?

The Juror: He is so much younger than I.

Mr. Rachlin: Judge, did you hear that?

We older fellows, I don't know whether we ought to resent that or not.

How close is your office to Mr. Watkins' office?

The Juror: Mine is on the third, and his is on the eighth.

Mr. Rachlin: Does the fact you are in the building, a fairly large building, bring you together often?

The Juror: We are together quite occasionally. I don't know exactly how to answer that.

Mr. Rachlin: How often would you say you see Mr. Watkins?

The Juror: Every day.

[fol. 64] Mr. Rachlin: Are these just "hello's" and go on?

The Juror: Mostly.

Mr. Rachlin: How often do you have a more extended visit?

The Juror: Well, I haven't had an extended visit with him in some months.

Mr. Rachlin: Would you lean over backwards for him because you knew him?

The Juror: No.

Mr. Rachlin: Sometimes this happens. This happened to me. Do you think you might in a case of this kind be inclined unconsciously to favor the position Mr. Watkins advocates as attorney?

The Juror: No.

Mr. Rachlin: You think you could look him in the eye tomorrow or the next day if you found a verdict against him?

The Juror: I am sure I could.

Mr. Rachlin: It wouldn't disturb you?

The Juror: No.

Mr. Rachlin: What is your occupation?

The Juror: I am with the Citizens Council.

Mr. Rachlin: What position do you have with the Council?

The Juror: Executive Director.



Mr. Rachlin: Do you also know Judge Spencer?  
[fol. 65] The Juror: Yes.

Mr. Rachlin: Do you see him as often as you see Mr. Watkins?

The Juror: Just about.

Mr. Rachlin: Mr. Hollis, I don't know too much about the Citizens Council, but I have read a word or two in the papers about it, but do you think in your capacity as Executive Director for the Jackson—or the State of Mississippi?

The Juror: Jackson.

Mr. Rachlin: Do you think that you could render a verdict for the Plaintiffs if the facts warrant it?

The Juror: The facts and the law and the instructions by His Honor.

Mr. Rachlin: You have heard us discuss the facts, as the Judge summarized parts of the complaint, and you heard him mention that three of the Plaintiffs are white and one is a Negro. As I say I am not an expert in the Citizens Council, but the Citizens Council would frown upon that, whites and Negroes together?

The Juror: We believe in social separation of the races.

Mr. Rachlin: Wouldn't this create a problem in your mind when twelve white men and three negro clergymen are together in a bus station, forgetting any other circumstances which might be involved in a case?

[fol. 66] The Juror: I wouldn't think it would have any effect on my decision. But, of course, I am disturbed.

Mr. Rachlin: I appreciate your candidness. I am sure, given another set of circumstances and if I were asked the questions, I probably would say the same thing. But, aside from the law or the particular merits, you might find this a disturbing factor?

The Juror: I would say every member of the jury would find it so.

Mr. Rachlin: You think every member?

The Juror: Yes, sir.

Mr. Rachlin: You look like a usually intelligent person;

and may I leave the fate of these plaintiffs in your hands, knowing what you have just said to me about you and every member of this jury?

The Juror: I guess that would not be up to me to answer that.

Mr. Rachlin: Could a verdict be rendered for the Plaintiffs in this case at all, after what you have just said?

The Juror: That is not up to me.

Mr. Rachlin: It is an unfair question, but I am asking that question because I think you have been—

The Juror: I consider a fair verdict could be rendered in this case, as in any other case, regardless of that fact.

[fol. 67] Mr. Rachlin: Mr. Hollis, were you Executive Director of the Citizens Council in September of 1961?

The Juror: I was.

Mr. Rachlin: I assume that you read the papers at that time?

The Juror: Yes, sir.

Mr. Rachlin: That was part of your job?

The Juror: Yes, sir.

Mr. Rachlin: I assume you remember when they were arrested?

The Juror: I do.

Mr. Rachlin: Had you formed an opinion about the case from reading it in the papers?

The Juror: No, sir, I have not.

Mr. Rachlin: You really didn't form an opinion when you read about the story?

The Juror: I have not up to this moment formed an opinion.

Mr. Rachlin: There were two different verdicts, one was in the Appeal Court before Judge Moore.

Do you know Judge Moore?

The Juror: Yes, I do.

Mr. Rachlin: Would you give me your name, please.

The Juror: Clifton E. Rhodes.

[fol. 68] Mr. Rachlin: Mr. Rhodes, I wonder if you would mind telling me your occupation.

The Juror: Vice President and Manager of Underwood Company.

Mr. Rachlin: What do they make?

The Juror: Components for homes—houses.

Mr. Rachlin: Where is that and what is that?

The Juror: Framing panels, cabinets, window trim, various kinds of things.

Mr. Rachlin: What is the extent of your territory?

The Juror: Just here in our state.

Mr. Rachlin: Do you have occasion to travel any?

The Juror: Some.

Mr. Rachlin: Do you like to travel?

The Juror: Oh, yes.

Mr. Rachlin: What was the last trip you took?

The Juror: You mean out of the State?

Mr. Rachlin: Yes.

The Juror: I guess it was last fall.

Mr. Rachlin: Where did you go?

The Juror: New York.

Mr. Rachlin: My home town. I hope you had a good time.

The Juror: I did.

[fol. 69] Mr. Rachlin: We like you to be taken care of, just as you do here in Mississippi.

And you are Mr. Webb?

The Juror: Yes, sir.

Mr. Rachlin: Mr. Webb, what is the first name?

The Juror: J. C. M. Webb.

Mr. Rachlin: Mr. Webb, you look like you have had a long and healthy life.

The Juror: Yes, sir.

Mr. Rachlin: What do you do?

The Juror: I'm retired.

Mr. Rachlin: I knew that.

The Juror: I was an operating engineer. I have been in heavy equipment all my life.

Mr. Rachlin: Where did you work?

The Juror: All over eight or ten states; building Army bases and roads, contracting jobs.

Mr. Rachlin: You covered Mississippi, and any other states?

The Juror: Well, worked lots of places in Mississippi.

Mr. Rachlin: Other states, as well?

The Juror: Yes, sir.

Mr. Rachlin: Where else did you work?

[fol. 70] The Juror: Tennessee, North and South Carolina, Alabama, Florida, Arkansas, all over.

Mr. Rachlin: You have covered a good part of the South.

The Juror: Yes. In other words, just where the job calls for us.

Mr. Rachlin: Do you live in Jackson?

The Juror: No, sir, fifty miles east of Jackson in Forrest, Mississippi.

Mr. Rachlin: Is it on the way to Meridian?

The Juror: Yes, sir, on 80 Highway.

Mr. Rachlin: How far from Meridian?

The Juror: About 48 miles from Meridian. It is about half-way to Meridian. I believe it is 80 miles from here to Meridian, and it is about half-way.

Mr. Rachlin: Do you like to serve on juries?

The Juror: No, sir, I don't like it.

Mr. Rachlin: Is there any reason why you couldn't render a fair verdict in this case?

The Juror: I wouldn't think so.

Mr. Rachlin: Do you think you could find a verdict for the Plaintiffs if you thought the facts and the law indicated it that way?

The Juror: Yes, sir.

Mr. Rachlin: And the fact the Defendants may be police-  
[fol. 71] men, or the fact that one of them is a judge, would that be of any influence on you?

The Juror: No, sir.

Mr. Rachlin: Let me see if I have the names right.

You are Mr. Edwards; you are Mr. Fletcher, is that right? And you are Mr. Garner?

The Juror: That is right.



Mr. Rachlin: And Mr. Shoemaker, and Mr. Murtaugh, and you are Mr. Boyer. And you are Mr. Strong?

The Juror: Yes, sir.

Mr. Rachlin: And you are Mr.—

The Juror: Roy G. Davis.

Mr. Rachlin: You gentlemen have all heard the various questions I have asked.

Tell me your name.

The Juror: Ben H. Pace.

Mr. Rachlin: What is your occupation?

The Juror: Butane Sales and Service.

Mr. Rachlin: Bottled gas?

The Juror: For home use.

Mr. Rachlin: Sales and Service?

The Juror: Yes, sir.

Mr. Rachlin: You have been with the company a long time?

[fol. 72] The Juror: Yes, sir, about eight years.

Mr. Rachlin: Where do you live?

The Juror: Forrest, Mississippi.

Mr. Rachlin: Do you know Mr. Webb?

The Juror: I do not.

Mr. Rachlin: Then, you wouldn't be influenced by the fact he might be a juror, too, and from Forrest, Mississippi, also?

The Juror: No, sir, I have only lived there six months.

Mr. Rachlin: Where are you from?

The Juror: Canton.

Mr. Rachlin: Do you know the other gentlemen from Canton?

The Juror: Yes, sir, I know them.

Mr. Rachlin: Are you well acquainted?

The Juror: No, sir, not too well.

Mr. Rachlin: These Plaintiffs are asking you to render as fair and honest verdict as you know how. Would the fact that there be people who have some slight acquaintanceship on the jury in some way influence you?

The Juror: No, sir.

Mr. Rachlin: In other words, would you be inclined to agree with him?

[fol. 73] The Juror: No, sir.

Mr. Rachlin: Or against them?

The Juror: No, sir.

Mr. Rachlin: Automatically?

The Juror: No.

Mr. Rachlin: What occupation did you engage in before?

The Juror: In the Navy.

Mr. Rachlin: What years were you in the Service?

The Juror: 1946 to 1953.

Mr. Rachlin: Was Mississippi also your home?

The Juror: Yes.

Mr. Rachlin: After you got out of the Navy you came back home?

The Juror: Yes, sir, that is right.

Mr. Rachlin: When you were in the Navy did you travel around?

The Juror: Yes, sir.

Mr. Rachlin: Where were you stationed?

The Juror: San Diego.

Mr. Rachlin: That is a long way from Mississippi.

The Juror: Yes, sir.

Mr. Rachlin: And your name, sir?

The Juror: B. Y. Felder.

[fol. 74] Mr. Rachlin: What is your occupation?

The Juror: Farmer.

Mr. Rachlin: How long have you been a farmer, all your life?

The Juror: All my life.

Mr. Rachlin: Your daddy had a farm before you?

The Juror: Yes, sir.

Mr. Rachlin: How long has the farm been in your family?

The Juror: I bought my own farm.

Mr. Rachlin: Oh, I see. What kind of farm is it?

The Juror: Just a farm.

Mr. Rachlin: I mean, is it a dairy farm, a cotton farm?

The Juror: Cows and corn.

Mr. Rachlin: What kind of corn do you grow?

The Juror: Feed corn.

Mr. Rachlin: You don't grow corn for—

The Juror: I sell corn.

Mr. Rachlin: Anybody who has eaten fresh corn never could go back to the public market.

What is your home?

The Juror: Magnolia.

Mr. Rachlin: You have heard everything I asked the other people, and is there anything about this case, the people involved here or the defendants which could keep you [fol. 75] from rendering a fair verdict?

The Juror: No.

Mr. Rachlin: Are you sure about that?

The Juror: Yes, sir.

Mr. Rachlin: There is no doubt in your mind?

The Juror: No.

Mr. Rachlin: You don't feel automatically that policemen are right?

The Juror: I don't feel they are always right.

Mr. Rachlin: You started to say something; you had something in the back of your mind?

The Juror: I have been an officer.

Mr. Rachlin: Where were you an officer?

The Juror: Magnolia, in Pike County.

Mr. Rachlin: Were you a police officer?

The Juror: I was a constable and deputy sheriff.

Mr. Rachlin: When was the last time you were?

The Juror: Sixteen years ago.

Mr. Rachlin: Is that before you had a farm?

The Juror: I bought part of it before and part of it after.

Mr. Rachlin: You have been an officer, and do you think it is wrong for a citizen to sue a policeman for false arrest?

The Juror: I wouldn't say it was.

[fol. 76] Mr. Rachlin: What is your name?

The Juror: Collum, M. E.

Mr. Rachlin: What is your occupation?

The Juror: First National Bank.

Mr. Rachlin: Do you have a lot of personnel, in the sense that you deal with other people?

The Juror: Yes.

Mr. Rachlin: I don't want to burden you with questions, but do you think you could render a fair verdict?

The Juror: Yes, sir.

Mr. Rachlin: You see in front of you here the Plaintiffs; and let me ask the same question I asked Mr. Hollis: Do you think the fact there are Whites and Negroes together would prejudice you in the case?

The Juror: No, sir.

Mr. Rachlin: In other words, you are as firm as Mr. Hollis?

The Juror: I don't know how firm Mr. Hollis was.

Mr. Rachlin: And you, sir, are Mr. Asher?

The Juror: That is correct.

Mr. Rachlin: Do you know Judge Spencer?

The Juror: Yes, sir.

Mr. Rachlin: And Mr. Watkins?

[fol. 77] The Juror: Yes, sir.

Mr. Rachlin: What business are you in?

The Juror: Real estate.

Mr. Rachlin: Do you sell commercial real estate?

The Juror: Any kind.

Mr. Rachlin: What is the name of your company?

The Juror: I have my own.

Mr. Rachlin: You have lived in Jackson a long time?

The Juror: Yes, sir.

Mr. Rachlin: Did you go to school here?

The Juror: Part of the time.

Mr. Rachlin: Where the other time?

The Juror: Cumberland, Tennessee.

Mr. Rachlin: You are Mr. McEwen?



The Juror: Yes.

Mr. Rachlin: What is your job?

The Juror: Forestry Conservation.

Mr. Rachlin: You work for the United States?

The Juror: For Mississippi.

Mr. Rachlin: The fact that there are police officers involved, would that make any difference with you?

The Juror: No.

Mr. Rachlin: You think as an employee of the State you [fol. 78] wouldn't be affected—

The Juror: No.

Mr. Rachlin: —by the fact that other public employees are involved in this case?

The Juror: No.

Mr. Rachlin: Do you feel that police officers are always right?

The Juror: Not every time.

Mr. Rachlin: If you think that the facts warranted it and the law warranted it, that you could find a verdict against the defendants in this case and for the plaintiffs?

The Juror: Yes.

Mr. Rachlin: You know that the plaintiffs are three white and one Negro. Would that affect your verdict?

The Juror: Not a bit.

Mr. Rachlin: Do you remember when this incident arose in September of 1961?

The Juror: Not exactly. I just remember it vaguely.

Mr. Rachlin: Have you formed an opinion about it?

The Juror: No.

Mr. Rachlin: You are Mr. Denson?

The Juror: Denson.

Mr. Rachlin: What is your occupation?

[fol. 79] The Juror: I live on a farm, grow some timber and just a few cattle.

Mr. Rachlin: A gentleman farmer.

The Juror: Well—

Mr. Rachlin: How big a farm?

The Juror: 200 acres.

Mr. Rachlin: That is a good size farm. That is the right size. How many cattle do you have?

The Juror: I own about 20 head.

Mr. Rachlin: Milk cows.

The Juror: Dairy cows.

Mr. Rachlin: I expect you have been on the farm some good time?

The Juror: Yes.

Mr. Rachlin: How long?

The Juror: About 40 years.

Mr. Rachlin: Mr. Denson, you have heard me ask a lot of questions of a lot of people here, and is there any reason why you can't render a fair verdict in this case?

The Juror: I wouldn't think so.

Mr. Rachlin: Do you think policemen are always right in making arrests?

The Juror: I don't imagine they are. I think sometimes [fol. 80] they would be like everybody else—would be wrong sometime.

Mr. Rachlin: Thank you, gentlemen.

Mr. Watkins: My name is Tom Watkins.

I am not going to belabor each one with questions, but I will ask the questions generally.

Each one of you, as I understand it, have said that you will decide this case on the facts as you hear them from the stand and on the law as the Judge gives it to you, and let those two things determine how you will decide the lawsuit. Am I correct? You are not going to listen to anything Mr. Rachlin says as to what is right or wrong nor be swayed by anything I say as to who was right or wrong, but get your facts from the witness stand and the law from the Court, is that correct?

Counsel has asked each one of you whether you believe a policeman could make a mistake, and you have with the utmost honesty said that yes, like other human beings, you think policemen are subject to making mistakes.

I am telling you now that I anticipate you will be instructed by the Court that even if you believe that the policemen made a mistake, in this case, you are not to return a verdict against the Defendants unless you further find from the evidence that it was an intentional mistake made for the purpose of discriminating against the Plaintiffs.  
[fol. 81] Mr. Rachlin: I wonder if I might object to these discussions of the law at this point?

The Court: You are objecting to that question?

Mr. Rachlin: Yes.

The Court: Sustain the objection to that question.

I will ask all of you gentlemen, if you are accepted on the Jury, you will take the instructions of the Court as the law of the case and follow those instructions in reaching your verdict.

Will each one of you do that?

(All the Jurors answered that they will.)

Mr. Watkins: I want to further state to this Jury that insofar as our views and interpretation of this case is concerned, we expect the evidence to show that this group of ministers who say they were on their way to Detroit for a church convention, did not go from their homes to Detroit but assembled in New Orleans, Louisiana, not for the purpose of going to Detroit, but for the purpose of coming to Jackson, Mississippi. They called their trip a pilgrimage.

We are going to show, expect to show from the witness stand, that their trip had every earmark, had every facet of other groups who called themselves freedom riders.

Mr. Rachlin: I hate to interrupt, but now we are getting into a summation, and I really think that these other groups—

[fol. 82] The Court: Yes, I believe, Mr. Watkins, without letting you complete your question, I think that will call for a conclusion in advance of what the Jury will do.

I can't instruct the Jury until all the facts are in, and then I will instruct them on what the law is. They have all

answered that they will follow the law, so I believe that is an unfair question you were getting ready to propound, and I sustain the objection to it.

Mr. Watkins: All right, sir.

I would like to ask each of you Jurors this question: Do you think that because the Plaintiffs are Episcopal ministers they are always right? In other words, can a minister make a mistake, as well as a policeman; and do each of you believe that is true? In view of the fact that we do have four Episcopal ministers that are plaintiffs in this case, I think it is a duty to my clients to ask you if that fact, or that religion would sway you either for or against the plaintiffs or the defendants in this case. Is there anybody who would be embarrassed to bring in a verdict against four Episcopal ministers, either because of their personal relationship or the religions of any others of you?

Does any member of this Jury know now any reason resulting from relationships of the plaintiffs or the relationships of the defendants that he believes would keep him from making a perfectly fair and impartial juror to try this case, fair both to the plaintiffs and the defendants?

[fol. 83] Is there any reason we haven't asked you, that you know of, that you feel you couldn't be a fair juror in this lawsuit? If any of you have any, I would like to know at this time.

You all tell me that if you are chosen on this Jury you will decide this case solely on the law and the evidence as you hear it in this courtroom and from the witness stand; is that your feelings, that each of you will do that?

Those are all the questions I have.

The Court: Very well, I will ask the attorneys to meet me in chambers and let the Jury remain seated for a few minutes.

(After Conference in Chambers)

The Court: Let the record show that Mr. L. W. Hollis was challenged for cause by the Defendant and the challenge for cause is overruled.



Mr. Watkins: You said by the Defendant.

The Court: I mean by the Plaintiff. Excuse me, gentlemen.

The following jurors may now be excused, to-wit:

Mr. B. Y. Felder, Mr. John Hart Asher, Mr. F. E. Boyer, Mr. J. M. Webb, and Mr. L. W. Hollis, and Mr. Marvin E. Collum, Jr.

Let the Jury be sworn in.

[fol. 84] A jury was duly empaneled and sworn.

By the Court: Gentlemen of the jury, at this point we are going to take a recess until nine o'clock tomorrow morning, but before we do, I want to instruct you that you now constitute the jury to try this case and it will be your duty not to talk to anybody about this case nor permit anybody to talk to you about it, nor permit anybody to discuss it in your presence or in your hearing. If anyone insists in talking to you or discussing it in your hearing, it will be your duty to report them to the Court. If there is a discussion going on in your hearing, then it will be your duty to leave if you can conveniently do so; but if you were so that you could not conveniently leave, then it would be your duty to tell such person that you are on this jury and not to discuss it in your presence. If he continues to do so, then it will be your duty to get his name and report him to me. It will be further your duty not to read any newspaper reports or listen to television or radio matters discussing this case if such should occur.

If I let you separate, will you obey those instructions? You will do that, all of you? Very well. Separate and be back tomorrow morning at nine.

Whereupon the court was recessed.

Tuesday, May 14, 1963, the trial was resumed.

Mr. Rachlin: At the time the witnesses were sworn yes-[fol. 85] terday, I indicated there was a witness who was not present in the court, but who I anticipated would arrive.

this morning. He has in fact come, and I would like to have him come and be sworn.

Mr. Watkins: Chief Ray was not in the room yesterday, and I would like to have him sworn at the same time.

The Court: Very well.

Witnesses were duly sworn.

The Court: I will permit you to make a short statement to the jury as to what you proceed to prove in the lawsuit.

Mr. Rachlin states the plaintiff's case.

Mr. Watkins states the defendants' case.

The Court: Gentlemen of the jury, in order that you may know what has foregone, the law permits and the rules of this court permit the lawyers to make a statement to the jury as to what they propose to show. The statements of the lawyers, neither Mr. Watkins nor Mr. Rachlin, is not evidence in the case; but are simply to give you a perspective of what the evidence may show. You will make up your verdict, of course, from the sworn testimony you hear on the witness stand.

Whom will you have?

Mr. Rachlin: Before I call the first witness, I would like to note for the record my objection to the opening statement [fol. 86] of Mr. Watkins as being inflammatory and solely for the purpose of prejudice and prejudicing the jury, and having nothing to do with the merits of this case.

The Court: I sustain the motion and exclude the remarks. On my own motion, I will exclude it, Mr. Rachlin. This is a matter of courtesy, Gentlemen of the jury, to permit the lawyers to state to the jury what they expect to show, and the effect is, as I just told you, for the purpose of advising you, not what the facts are but what they expect the witnesses to testify to; so that since there has been such a wrangle about it, you can just disregard the remarks of both lawyers, and I am going to let them put their testimony on, and at the conclusion of the testimony they will then argue the case to you, and I will then instruct you on

what the law is. So you may just disregard everything that has been said by each of the lawyers.

Mr. Rachlin: As our first witness, we'd like to call Reverend James G. Jones.

JAMES G. JONES, JR., called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Rachlin:

Q. You are normally called Father Jones? Is that correct?

[fol. 87] A. That is correct.

Q. I am going to refer to you in that manner. Where is your residence?

A. I live in Chicago, Illinois.

Q. State the exact residence.

A. 4925 South Woodlawn Avenue.

Q. With whom do you reside?

A. My wife and five children.

Q. Will you tell us how you are employed?

A. I am a priest of the Episcopal Church. I am directly under the supervision of the Bishop of Chicago, assigned as the supervising priest for the prison chaplaincy work of the diocese.

Q. Is that what is known as St. Lennox?

A. Part of the work involves St. Lennox House, which is a rehabilitation center for ex-prisoners.

Q. Very briefly, tell us then what is your role in the work you do. What do you perform?

A. Well, I'm boss. There are eight priests, some of them assigned in the prisons, some of them working with men as they get out, men and women, psychologists, case workers, cooks, employment directors— The whole idea is to take men out of these institutions and get them started [fol. 88] in society so that crimes will not be committed as they get out.

Q. Now, did you serve in the service?

A. I was in the United States Navy in World War II.

Q. Any particular part of the Navy?

A. I was originally a Seabee; later a deep sea diver, and for approximately a year was a member of the permanent Shore Patrol stationed in Sicily.

Q. As a member of the shore patrol, did you have occasion as part of your duties to work with and handle large groups of people?

A. Yes. As a matter of fact, all of Sicily was under martial law during the occupation, and there were occasions where we handled large groups of people and one particular case where we did handle an occasion of violence.

Q. So you have had some experience with ugly crowds?

A. Yes, sir.

Q. I want to draw your attention to September 13, 1961. Were you in Jackson, Mississippi, on that day?

A. Yes, I was.

Q. Where had you come from?

A. I had come from Tougaloo College where I had spent the night, took a taxi to the bus station.

[fol. 89] Q. How many people were you accompanying at that time?

A. In my particular taxi there were five people. The seats were full, and there were three taxis.

Q. And a total, all told, in the group?

A. 15 clergymen on their way to St. Mary's and St. Andrew's in Chattanooga, Tennessee.

Q. Had you already purchased a bus ticket?

A. The tickets were already purchased, yes.

Q. Did you know what time the bus was scheduled to leave?

A. As I recall, it was at 12:05 or a minute or so within that time. It was in the afternoon.

Q. What time did you arrive, if you remember, at the Continental Trailways Bus Station near this courtroom?

A. About 11:20 or 25, something like that.

Q. Did all the taxicabs arrive at the same time?



A. Yes, they pulled in one behind the other where the taxis unload.

Q. What did you do after you got out of the taxicab?

A. Paid the man for driving us, and he took his suitcases and handed them to us, and we walked in the front door of the bus station.

Q. Approximately how far was it from the place where the taxi driver let you off to the entrance to the station [fol. 90] where you entered the station?

A. 50 or 60 feet, I suppose. A very short distance.

Q. About how long did it take you to make that walk?

A. Gosh, I imagine a minute. I don't think it would have taken longer than that.

Q. Did all 15 of you walk in at the same time?

A. Well, sort of. I mean, there were double doors, and you open them, and we went in two or three at a time. 15 didn't surge through at one single moment.

Q. Did you have an opportunity to observe whether there were any people on the street following you into the station?

A. There certainly weren't that I could see, no, sir.

Q. Were you one of the first into the station, of the 15 Episcopal clergymen?

A. There were a few priests ahead of me, but I was sort of at the head of the group, yes.

Q. Do you recall what direction you walked just as you entered the station?

A. As we entered the station, we turned to the left, and there's a little news and chewing gum thing there, and we walked by that toward the lunch—sandwich place—because we had a half hour to get on the bus and, as I understood, there was no possibility of eating after that happened, [fol. 91] once we got on the bus to go to Chattanooga.

Q. Do you know approximately how long it would take by bus from Jackson to Chattanooga?

A. It was a long trip. As I recall, we wouldn't get there until late at night.

Q. After you entered the station and all of you started to walk toward this lunch room you refer to, what happened at that point?

A. Well, there were two police officers standing close to the front of the bus station.

Q. Front? You mean near the entrance?

A. Yes. They were facing the two front doors, and we walked by them.

Q. Did you hear anything as you walked by them?

A. Yes, I did.

Q. What did you hear?

A. I heard one mention to the other— To this day I could not tell you which officer said it to whom, but it was, "Shall we get them now or later?"

Q. Do you see the two officers you have just mentioned in this courtroom today?

A. Yes, they are both here.

[fol. 92] Q. Could you stand up for a moment and point them out to us and to the jury?

A. One is the gentleman in blue on one side of Chief Ray, and the other is the gentleman in blue on the other side of Chief Ray.

Mr. Rachlin: Could we ask these persons to identify themselves for the record?

The Court: Yes.

Mr. Rachlin: I wonder if you would mind standing, the gentleman to the left of Chief Ray?

Gentleman: Joseph David Griffith.

2nd Gentleman: David Allison Nichols.

Q. Did you continue walking in the direction you were walking after you heard this?

A. Oh, yes. Sure, I walked right on past the newsstand and into the restaurant, at which point one of the policemen said, "All right. Hold it right there."

Q. Was that one of the two you have just described?

A. Yes, sir.

Q. Will you describe the tone of voice that was used at that point?

A. Well, it seemed to me an extreme hostile tone of voice. I didn't particularly feel that it was said with very much [fol. 93] dignity or respect.

Q. Did you hear any of your fellow clergymen make any loud noises as you entered the station?

A. No, no. They were quiet.

Q. Did you hear them utter any obscene remarks?

A. No.

Q. Did you see them litter the floor of the station in any way?

A. No. One of them might have dropped a cigarette butt, but I don't know.

Q. Did any of them make any threatening gestures to anybody in the station or to themselves?

A. No. There were no such things as that.

Q. Now, did you observe, if you had the chance, any substantial number of people enter the station immediately after you?

A. I saw none of this.

Q. What do you mean by "none of this"?

A. None of this so-called crowd of people. I'm sure we were not the last people to enter this door. There was normal bus passenger traffic taking place, 10 or 15 people in the station, some sitting, some buying tickets, some at the newsstand; but this surge of crowd I did not see.

Q. Did you hear any unusual noises from the people in [fol. 94] the station after you got in the station?

A. No, I didn't.

Q. Did any of them make any threatening gestures towards you or the other clergymen with you?

A. No, sir, I saw nothing like that.

Q. Did any of them shout or make any loud remarks directed toward you or any of the other clergymen?

A. Well, the policemen—

Q. —Except for the policemen?

A. Except for the policemen, no.

Q. Were you able to observe any unusual disturbance among the people in the station at this time?

A. No, I saw nothing like that.

Q. And you have described your experience with the Navy Shore Patrol, is that right, in handling large crowds?

A. Yes. It seems to me that when there are tense situations, if you are experienced in this, you have a feeling of that kind of electricity which is in the air. I know in prisons we on occasions have prison riots. I have been in three of them. You can tell almost when things are tense inside of a situation, and I did not have that feeling. There was not this tense kind of feeling in the crowd. It seemed to me to be a rather normal bus traveling group of people [fol. 95] who were going about their business.

Q. After one of the officers said, "Hold it up," or whatever the words, what took place at that point in your vision or in your hearing?

A. It was right at the entrance of the restaurant and at the foot of the stairs leading up to the ladies' lounge.

Q. Did you hear or see anything right after the officer said "Hold it up"? Did they say anything else?

A. Well, the first thing I heard was, there were two rather elderly ladies come downstairs from the ladies' lounge and were sort of surprised their way was blocked and they couldn't get by. And everybody tried to let the poor ladies out—by.

Q. Did you observe any hostility on their part?

A. No. The doorway was clogged, and I'm sure they wanted to go about their business.

Q. What was the next thing the policemen said?

A. "You all move along."

Q. Did you or any of the other clergymen in your hearing say anything?

A. Yes, asked him what he meant, that we were interstate travelers and had tickets, our bus was leaving at [fol. 96] twelve-something—12:05—and that we were



hungry, wanted to eat and get on our bus; why was he asking us to move along? What were we doing wrong?

Q. Is that what was asked of him in your presence?

A. Yes.

Q. Were you the one who asked this?

A. I asked some of these questions. There were other clergymen that asked other questions.

Q. What was their reply to you, if any?

A. There was no reply. It was, "I'm telling you to move along."

Q. What was the next thing that happened?

A. He asked the third time, "I'm telling you to move along. Do you understand what I'm telling you?" and placed us under arrest.

Q. Do you recall which one of the officers it was who said to you or to the group, "You are under arrest"?

A. Yes. Officer Griffith placed us under arrest.

Q. That is one of the defendants in this case? Is that right?

A. Yes, sir.

Q. Was the other one standing there at the time?

A. Yes. As a matter of fact, the other officer, Nichols, was the one who seemed to do most if not all the questioning, but Officer Griffith was the one who made the actual [fol. 97] arrest.

Q. Then what happened immediately after that?

A. Well, said "Put your suitcase down; just stay right there."

Q. Did any of you move away?

A. No, we all, as a matter of fact, bowed our heads and began to recite the Lord's Prayer. Not loudly; just softly. It's rather a frightening experience to be placed under arrest.

Q. So how long did that take? Would you know?

A. I suppose it takes a minute or two to say the Lord's Prayer.

Q. Then what happened after that?

66  
A. Well, we just stood there and waited to be told what to do.

Q. At this moment, which direction were you facing?

A. I was facing with my back to the ladies' lounge and restaurant.

Q. Would that be toward the front entrance, generally speaking?

A. Yes, toward the newsstand and the front doors and ticket place.

Q. Where were the officers in relation to you?

A. One had gone off somewhere—apparently was telephoning. And the other was standing very close to me over to the side.

Q. Was he facing toward you?

A. At times, and at times they were facing the other way.

Q. Was there any crowd standing behind you?

[fol. 98] A. I saw no such crowd. There seemed to me to be about the same number of people after we were placed under arrest and before. I don't think there is any doubt that people were sort of looking. I don't blame them. It's an unusual thing to see in a bus station 15 priests under arrest or stopped.

Q. Did you hear any unusual hubbub in the station at this time?

A. No, it was extremely quiet, as a matter of fact. I know I looked up at one point while the Lord's Prayer was going on, and it appeared to me as if someone of the persons was praying with us; at least, their lips were moving similarly.

Q. I take it at this point you didn't observe any threatening gestures by any of the persons in the station at that time?

A. I saw no threatening gestures by anyone except the officers that stopped us, and, of course, that threat was only verbal, not physical.

Q. Now, how long after did Chief Ray—then Captain Ray—arrive?

A. Three or four minutes, I suppose.

Q. Did you observe him come into the station?

A. Yes.

Q. Just tell us what did you see him do. —Let me re-  
[fol. 99] phrase the question: Did you see him come in the  
entrance?

A. Yes.

Q. What entrance did he come in?

A. The rear entrance where the buses load.

Q. Is that on the opposite side of the station you entered  
from?

A. The opposite side.

Q. Tell us in your own words exactly what you saw him  
do and then what he said, if anything.

A. He very calmly walked across the bus station.

Q. Did he stop?

A. No.

Q. Did he come directly toward you?

A. Came directly toward the group.

Q. Did he look around?

A. I didn't notice him look around at all. Just sort of  
half smiling. He walked calmly, with dignity, straight to  
where we were.

Q. Then what took place?

A. He again said to us, "I want you to move along. I'll  
see you safely on your bus." And we again said to him  
that we didn't understand why he was doing this. —By the  
way, we were able to call him by his name because he had a  
little name plate here. —And said, "Mr. Ray, we are trying  
[fol. 100] to get something to eat. We have about half  
an hour before our bus leaves. Please let us eat and get  
on our bus and go quietly on our way to Chattanooga. He  
again asked us to move along, and he also placed us under  
arrest.

Q. Then what happened immediately after that?

A. We were taken out the door where we should have  
been catching our bus and instead we caught a paddy wagon.  
We were taken over to the end of the ramp where we

waited a few minutes. One of our members was carrying a little Bible, and he read a few verses to us and we were put into the paddy wagon with our baggage and taken to the police station. There we were fingerprinted—And I understand my fingerprints are still in Washington as this culprit—photographed, interrogated by detectives, put into a bull pen, and later taken to court.

Q. You used the word "bull pen." I'm not sure I understand what you mean. Tell us what you mean by "bull pen."

A. I guess in different parts of the world they call this octangular cell block with dormitory type beds in it a tank or bull pen. In other words, we were put into a common cell.

Q. How many people does a cell normally hold?

A. I suppose 30, 35 maybe.

[fol. 101] Q. Were you the only ones in that cell?

A. Yes.

Q. Just the 12?

A. 15 were put in the cell.

Q. All 15 of you were arrested? Is that correct?

A. That is correct.

Q. And taken— And did you observe all of them go through the same procedures as you went through?

A. No, I couldn't observe all going through this procedure because they took us one by one. Afterward, they told me that everything that happened to me happened to them.

Mr. Watkins: We object to what they told him.

Mr. Rachlin: I consent to that.

The Court: Objection sustained.

Q. You are not allowed to guess what took place; only describe what you saw, heard and observed. You can't surmise what took place out of your earshot or eyesight. Among the group that were arrested, was Mr. John Morris, one of the plaintiffs, involved?

A. Yes.

Q. Was Father Breeden one of those arrested?



A. Yes, he was.

Q. Was Father Pierson one of those arrested?

[fol. 102] A. Yes, he was.

Q. Did you know that they were all taken to the jail together?

A. Oh, yes.

Q. Do you know what this jail was called?

A. Did I know?

Q. Do you know what this jail is called?

A. City jail.

Q. Where is the city jail located?— Not the street. What city?

A. Jackson, Mississippi.

Q. You have described what took place to you personally. And then you were all placed in this common cell? Is that right?

A. Yes.

Q. Now, what day of the week was this, if you recall?

A. I think a Tuesday. It was the 13th, whatever that was.

Q. September 13th? Is that the correct date?

A. Yes.

Q. What year?

A. 1961.

Q. Were you told what you were charged with?

A. Yes.

Q. What was it?

A. Breach of the peace.

Q. —

[fol. 103] Mr. Watkins: We object to that. What he was charged with would be a matter of record.

Mr. Rachlin: He was told by the officer.

The Court: Just a minute. Objection overruled. That is what one of the defendants in the case told him. Anything any defendant in the case told him he can testify to.

The Witness: Then I withdraw it. I was not told by a defendant.

Q. All right. Let me take you back to the station for a minute. Did any of your brother priests, after you were

placed under arrest, ask one of the officers what was the charge?

A. Yes. Mr. Morris asked Captain Ray.

Q. Did you hear Mr. Morris ask the question?

A. I did.

Q. What was the question he asked?

A. "On what charge are we arrested?"

Q. Did you hear what Captain Ray said?

A. Captain Ray said, "Breach of the peace."

Q. Let us go back to the jail. How long after you were arrested were you tried/in Judge Spencer's court?

A. I think it was two days.

[fol. 104] Q. Did you remain in jail during that time?

A. Yes.

Q. Had bail been set?

A. I don't think so. It was no mention from anyone about bail.

Mr. Watkins: We object to what he thinks.

The Court: Sustain the objection as to what he thinks. If he has a memory of anything, he can give his best recollection as to his memory.

A. Can I give a recollection of my non-memory? I don't remember.

Q. Of course, if you don't remember, say you don't remember. Now, did you appear in court for trial before Judge Spencer?

A. Yes, sir.

Q. Without going into details of the trial, were you acquitted or convicted at/that trial?

A. I was convicted and sentenced.

Q. What was the sentence?

A. Four months' incarceration and \$200.00 fine.

Q. By the way, did you plead innocent or guilty?

A. Innocent.

Q. After sentence was imposed by Judge Spencer, was it imposed right after the trial?

[fol. 105] A. Yes, sir, right then.

Q. What happened thereafter?

A. We were put back in jail.

Q. Do you know at this point whether bail was set, if you recall?

A. Yes. Bail was then set at \$500.00.

Q. Did you have the \$500.00?

A. I did not.

Q. Do you recall then when it was that you received sufficient money for bail?

A. It was either 19 or 21 days later. I just cannot remember exactly the amount of days I was inside the jail. It was approximately three weeks.

Q. In other words, you stayed in jail from the date of the conviction for another additional 19 more days?

A. Yes.

Q. That was until bail was received? Is that correct?

A. That is correct.

Q. Do you know where the bail money came from?

A. The bail money came from a collection being made in my diocese, various churches. Since there were two priests from the diocese, when a thousand dollars was collected, they sent it to my lawyer and he posted bond.

[fol. 106] Q. Now, did you enjoy your stay in jail?

A. No, sir.

Q. Describe what the conditions were like.

A. Well, I was not mistreated physically in jail or bitten by bugs or anything like that. It was a clean jail, and I was treated well. My only complaint was, A, being there—I think I had no business being there; and, B, I did not like the food and lost some nineteen pounds during that period.

Q. During the period you were in jail, you say you lost nineteen pounds?

A. Yes.

Q. Did this have any effect on your health?

A. I doubt serious effect.

Q. How long did it take you to gain back that weight?

A. Two or three months.

Q. Other than that, I take it your health was not impaired other than the loss of weight?

A. No.

Q. You had no permanent effects?

A. No.

Q. Did you instruct attorneys to appeal this conviction?

A. Yes.

[fol. 107] Q. Did you appear in court on subsequent occasions on appeal?

A. Yes, sir.

Q. Do you know who was the judge presiding on that occasion?

A. Judge Moore.

Q. Was that Judge Russell Moore of the Hinds County Court?

A. Yes, sir.

Q. Was your case the first case tried on the appeal?

A. Yes, I was the first one.

Q. Were you present when Judge Moore made a decision in that case?

A. I was.

Q. Did you hear what he said?

A. He said I was not guilty of having done anything wrong.

#### OFFER IN EVIDENCE

Mr. Rachlin: At this point, I would like to offer a document in evidence. I don't know whether this is certified or attested to, but it bears the signature of H. T. Ashford, Circuit and County Court, Hinds County—I'm sorry. It doesn't bear the signature of Mr. Ashford. It apparently bears the signature of Robert E. Lilly. I would like to ask Mr. Rosenthal to give the information about what this document is, with your permission, Your Honor.

Mr. Rosenthal: This is the complete court finding of the [fol. 108] appeal to County Court from Judge Spencer's court on appeal. It is attested to, as required by Rule 44a



of the Rules of Civil Procedure. It is signed by a deputy clerk, as the Rule provides.

The Court: That is the Judgment of Acquittal?

Mr. Rosenthal: This is the complete record of every paper transferred up on appeal.

The Court: Very well.

Mr. Watkins: May we look at it?

The Court: Yes.

Mr. Rachlin: May the record show Mr. Rosenthal submitted the document to Mr. Watkins?

The Court: Yes.

Mr. Watkins: No objection.

The Court: Hand it to the court reporter.

(Same received in evidence and marked as Plaintiff's Exhibit No. 1, which exhibit follows here below:)

**PLAINTIFF'S EXHIBIT No. 1**

(Filed Oct. 10, 1961)

October 9, 1961

County Court Clerk  
Hinds County Courthouse  
Jackson, Mississippi

Dear Sir:

Section 1205 of the Mississippi Code of 1942 provides [fol. 109] that "The Justice of the Peace, or Mayor, or Police Court from whose judgment convicting of a criminal offense an appeal shall be taken, shall at once transmit to the Clerk of the Circuit Court the bond taken by him and a certified copy of his record in the case, with all the original papers in the case, as in appeals in civil cases."

In accordance therewith, I am enclosing herewith a certified copy of my record in the case of State of Missis-

issippi versus James Garrard Jones, with all the original papers in the case to be dealt with according to law.

With very best regards, I remain,

Very sincerely yours,

/s/ (Signature illegible)

Police Justice and Ex Officio  
Justice of the Peace, City of Jackson,  
Hinds County, Mississippi

JLS:ssw

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IN THE POLICE COURT OF THE CITY OF JACKSON, MISSISSIPPI

(Filed Oct. 10, 1961)

Docket No. 19

Page No. 410

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STATE OF MISSISSIPPI

vs.

JAMES GARRARD JONES

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CERTIFICATE

I, James L. Spencer, Police Justice and Ex Officio Justice [fol. 110] of the Peace, in and for the municipality of Jackson, Hinds County, Mississippi, do hereby certify that the attached and within:

1. Affidavit
2. Order for Cash Appeal Bond
3. Copy of Judgement
4. Notice from Sheriff

5.

6.

is a certified copy of my record in the case, with all the original papers in the case.

WITNESS MY SIGNATURE, this the 9th day of October, 1961.

/s/ (Signature illegible)

Police Justice and Ex Officio Justice of  
the Peace, City of Jackson, Hinds County,  
Mississippi.

(558-1)

GENERAL AFFIDAVIT

(Filed Oct. 10, 1961)

STATE OF MISSISSIPPI

COUNTY OF HINDS

This day personally appeared before me, the undersigned James L. Spencer, a Police Justice of the City of Jackson, and Ex-Officio Justice of the Peace of said City, J. L. Ray [fol. 111] who, being by me duly sworn, makes affidavit that James Garrard Jones on or about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississippi, under such circumstances that a breach of the peace might have been occasioned thereby, did then and there congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there wilfully and unlawfully fail or refused to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, con-

trary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi.

/s/ J. L. Ray  
AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME this the 15 day of  
Sept., 1961.

/s/ JAMES L. SPENCER  
Police Justice and Ex-Officio  
Justice of the Peace

[fol. 112]

Docket No. 19

Page No. 410

STATE OF MISSISSIPPI

VS.

JAMES GARRARD JONES

JUDGMENT

(Filed Oct. 10, 1961)

This cause this day coming on for trial and the defendant being arraigned in court on a charge of violation of Section 2087.5 of the Mississippi Code of 1942, and having pleaded not guilty and the court having heard testimony and being of the opinion that the defendant is guilty, it is therefore considered by the court and so ordered and adjudged that the defendant serve a jail term of 4 months and pay a fine of \$200.00 and be committed to jail until paid.



ORDERED AND ADJUDGED, this the 15th day of September, 1961.

/s/ JAMES L. SPENCER  
Police Justice and Ex Officio Justice of  
the Peace, Hinds County, Mississippi

Disposition of Defendant: Mittimus to Sheriff

[fol. 113]

IN THE MUNICIPAL COURT OF THE CITY OF JACKSON,  
FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

CITY OF JACKSON

VS.

JAMES GARRARD JONES

ORDER FOR CASH APPEAL BOND  
(Filed Oct. 10, 1961)

This cause this day coming on to be heard on the oral motion of the defendant, James Garrard Jones by and through his attorney, for authority to post a Cash Appeal Bond in lieu of a bond with sureties, and it appearing unto the Court that the defendant is a non-resident of the State of Mississippi and that no person, who has property within the State of Mississippi, is willing to serve as surety on his bond and that the defendant should be allowed to post a Cash Appeal Bond.

It is, therefore, Ordered and Adjudged that the defendant, James Garrard Jones, be and he is hereby authorized to post a Cash Appeal Bond of Five Hundred (\$500.00) Dollars and that the Sheriff of Hinds County be and he is hereby authorized to accept the same.

ORDERED AND ADJUDGED on this 28 day of September, 1961.

[fol. 114]

/s/ (Signature illegible)  
Municipal Judge & Ex-Officio  
Justice of the Peace

Approved and agreed to:

/s/ (Signature illegible)  
City Prosecutor

/s/ JACK H. YOUNG  
Of Counsel for Defendant

\*\*\*

Cash bond is accepted because James Garrard Jones is a non-resident of the State of Mississippi and knows no person within the State who has property and is willing to sign bond.

APPEAL BOND  
(Filed October 6, 1961)

#12,941

STATE OF MISSISSIPPI )  
COUNTY OF HINDS )

KNOW ALL MEN, That we James Garrard Jones Principal, and ..... and ..... sureties are held unto the State of Mississippi in the penal sum of (\$500.00) Five Hundred & No/100 Dollars, for payment of which we bind ourselves and legal representatives thereunto, jointly and severally and firmly by these presents, signed with our names this 29 day of September, A.D., 1961

The condition of the above obligation is that the above named James Garrard Jones on the 15th day of September A.D., 1961, before the Municipal Court of the City of Jack- [fol. 115] son in and for said county and State, was duly and regularly arraigned and tried on a charge of: Breach of the Peace and was then and there by the said Municipal Court adjudged "Guilty as Charged" and fined in the sum

of (\$200.00) \$200.00 and four months in jail dollars and all costs. And the said James Garrard Jones hath prayed an appeal of the said judgment to the next term of the County Court in and for said County and State.

Now, THEREFORE, If the said James Garrard Jones shall appear in person at the next term of the said County Court, and there remain from day to day and from term to term until discharged by law from the said charge, there then this obligation shall be void, otherwise it shall be in full force and effect and binding on all parties, joint and several, therein named.

Given under our hands, this 29 day of September 1961

/s/ JAMES GARRARD JONES Principal  
1234 E. Madison Pk. Surety  
Chgo. 15, Ill. Surety

The foregoing Bond was filed and approved this 29 day of Sept. 1961

J. R. GILFOY,  
Sheriff & Tax Collector  
Sheriff of Hinds County.

[fol. 116]

By /s/ FRED PICKETT  
Deputy Sheriff.

Case Set

5/7/62

-9 A. M.

Honorable James L. Spencer  
Municipal Judge  
Jackson, Mississippi

Dear Sir:

Pursuant to Section 1204, Mississippi Code of 1942, as annotated, I, the undersigned, Sheriff of Hinds County, Mississippi hereby advise you that I have taken a cash appeal bond from the following named individual, after having duly approved the same; that I have further turned over the said bond to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi.

I hereby notify you as Municipal Judge of the City of Jackson, Mississippi, that an appeal has been taken with regard to said individual and I direct you to send up all papers regarding said individual to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi, as if the appeal bond had been filed with you, from whose judgment the appeal was taken.

Name

James Garrard Jones

Date of Bond

September 29, 1961

Thanking you for your compliance with this request, I remain,

[fol. 117]

Sincerely yours,

/s/ by: FRED PICKETT, D. S.

J. R. Gilfoy, Sheriff  
Hinds County, Mississippi



IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT OF  
HINDS COUNTY, MISSISSIPPI

No. 12941

STATE OF MISSISSIPPI

VS.

JAMES G. JONES

MOTION FOR LEAVE TO AMEND AFFIDAVIT  
(Filed May 21, 1962)

Comes now the State of Mississippi, by Paul G. Alexander, the duly elected, qualified and acting County Attorney for Hinds County, Mississippi, and moves the Court to grant leave to amend the affidavit heretofore filed against the defendant in the above styled and numbered cause in the following manner:

1. By striking the word "disburse" where it appears in the affidavit and by substituting or interlining the word "disperse".
2. By striking the words: "with intent to provoke a breach of the peace, did then and there wilfully and unlawfully", where same appear in the affidavit, and by substituting or interlining therefor the words: "under such circumstances that a breach of the peace might be occasioned thereby, did then and there".
- [fol. 118] 3. By adding the words: "wilfully and unlawfully" just prior to the words: "fail or refuse to disperse etc." where same appear in the affidavit.
4. Otherwise, said affidavit shall stand as Written.

Respectfully submitted,

/s/ PAUL G. ALEXANDER  
Paul G. Alexander,  
County Attorney

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IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT OF  
HINDS COUNTY, MISSISSIPPI

No. 12941

STATE OF MISSISSIPPI

VS.

JAMES G. JONES

ORDER ALLOWING AMENDMENT OF AFFIDAVIT

This day this cause came on to be heard upon the motion of Paul G. Alexander, the duly elected, qualified and acting County Attorney for Hinds County, Mississippi, for leave to amend the affidavit heretofore filed against the defendant in the above styled and numbered cause in the following manner:

1. By striking the word "disburse" where it appears in the affidavit and by substituting the word "disperse".
2. By striking the words: "with intent to provoke a breach of the peace, did then and there wilfully and [fol. 119] unlawfully" where same appear in the affidavit, and by substituting or interlining therefor the words: "under such circumstances that a breach of the peace might be occasioned thereby, did then and there".
3. By adding the words: "wilfully and unlawfully" just prior to the words: "fail or refuse to disperse etc." where same appear in the affidavit.
4. Otherwise, said affidavit shall stand as written.

And it appearing unto the Court that the motion is well taken:

IT IS, THEREFORE, ORDERED AND ADJUDGED that the movant be, and he hereby is, authorized and allowed to amend said affidavit to the extent and in the manner hereinabove set out.

ORDERED AND ADJUDGED this 21 day of May, 1962:

/s/ RUSSELL D. MOORE  
County Judge

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IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT OF  
HINDS COUNTY, MISSISSIPPI

No. 12941

STATE OF MISSISSIPPI

VS.

JAMES G. JONES

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ORDER

This cause coming on to be heard in the County Court of the First Judicial District of Hinds County, Mississippi, [fol. 120] on the original affidavit of the City of Jackson, Mississippi. This cause being brought to this Court upon an appeal and the City of Jackson, Mississippi, being present by its prosecutor. The defendant being present in person and by attorney and entering a plead of not guilty.

The regular jury for the week composed of G. J. Reese and eleven other men, having been duly empaneled and sworn to try the cause. The City of Jackson, Mississippi, offered all of its evidence and rested. The defendant made a motion after for directed verdict of not guilty. The Court considered said motion after arguments of the cause and is of the opinion that the said motion should and is hereby sustained.

It is therefore, Ordered and Asjudged the defendant is here found not guilty of the charge herein made against

him and that he is now hereby finally and forever discharged. That the cash bond of \$500.00, heretofore deposited with the sheriff of this County be refunded to the defendant.

Ordered, this, the 22nd day of May, 1962.

/s/ RUSSEL D. MOORE  
Judge

STATE OF MISSISSIPPI  
COUNTY OF HINDS

I, H. T. Ashford, Jr., Clerk of the Circuit and County [fol. 121] Courts, and custodian of the said records in and for the said State and County, hereby certify that the foregoing 10 pages contain a true and correct copy of all the pleas and proceedings had and done in the case of State of Mississippi vs. James Gerrard Jones in the County Court of the First Judicial District of said County in said State, and being case No. 12941.

Given under my hand and the seal of the County Court of said County and State this the 8 day of May, 1963.

H. T. Ashford, Jr.  
Circuit and County Courts,  
Hinds County, Mississippi

/s/ ROBERT E. LILLEY D. C.  
(SEAL)

Mr. Rachlin: I wonder if I may request permission of the Court to have the jury look at this document?

The Court: Yes.

Mr. Rachlin: Whom shall I submit it to first?

The Court: You can read the material, parts of it, if you want to, because if you showed it to each one of them to read, it would consume a large amount of time. I suggest you read what parts you want to read.



Mr. Rachlin: I will at this moment merely read the Order [fol. 122] of Judge Russell Moore.

The Court: It will go to the jury room with them anyhow.

Mr. Rachlin: I am going to read two parts of the document just submitted in evidence. First is the document entitled "General Affidavit", which appears to bear the signature of Chief J. L. Ray. It is sworn to and subscribed the 15th day of September, 1961.

(Same was read aloud by Mr. Rachlin)

I will now read a document headed "In the County Court of the First Judicial District of Hinds County, Mississippi, Number 12941. State of Mississippi versus James G. Jones. Order."

(Same was read aloud by Mr. Rachlin)

(Mr. Rachlin continues:)

Q. Father Jones, did you return to Jackson, Mississippi, for your arraignment in the County Court of Judge Moore?

A. Yes, I flew in from Chicago here for that purpose.

Q. Can you tell us what your expenses were for the trip back and forth, including necessary expenses in the City of Jackson?

A. \$160.00 to \$175.00.

Q. Did you come back for the trial itself?

[fol. 123] A. Yes, I did.

Q. Were your expenses a similar amount at that time?

A. Slightly more in that the time was a little longer.

Q. After you were convicted in Judge Spencer's court and after you returned to your place of employment at St. Lennox House in Chicago, did you receive any criticism made to you as a result of what happened?

A. Yes.

Q. What was the nature of this?

Mr. Watkins: I object to this unless he discloses the source of the criticism. I don't know whether he is talking about these defendants.

Mr. Rachlin: I'll accept the suggestion by Mr. Watkins.

The Court: Well, I don't think any hearsay evidence would be admissible. Anything that either one of these defendants said would be competent.

Mr. Rachlin: I think I am permitted to show, not being in violation of hearsay, that he was the subject of probing. It isn't a question of whether the statements were true, but whether he in fact received them. Therefore, I think it is an exception to the normal hearsay rule.

[fol. 124] Mr. Watkins: If these were statements alleged to have been made by other persons not/produced here for cross examination, I think it would fall within the hearsay rule.

The Court: Yes, I think that would be hearsay. Anything that these defendants said, of course, is competent. Of course, as to whether it would be a matter that might subject one to criticism, of course, that is a matter for the jury to determine as to whether it would or not; but if it was someone who could come here and be subjected to cross examination, that would be competent. But what he heard was hearsay, and I sustain the objection.

Q. Is a part of your work at St. Lennox a duty to raise money for St. Lennox?

A. Yes. I'm in charge of raising approximately \$116,000.00 a year to run this work.

Q. As a result of your arrest and conviction and stay in jail, did you have any experience personally, any difficulty, in raising money?

Mr. Watkins: We object to that. That is a matter of the institution that has no concern here.

[fol. 125] The Court: Yes, sustain the objection.

Mr. Rachlin: It is a question of his job, whether he could perform his job.

The Court: Sustain the objection. If he has not raised that amount of money, it is competent for him to testify he has not raised as much money as he formerly did, but what it is attributable to would be another question; so I

sustain the objection to the extent that he cannot testify he was not able to raise as much money because of the arrest.

Q. After the arrest and your return to St. Lennox, were you able to raise as much money as you had formerly?

Mr. Watkins: We object to that as being immaterial to any issue in this lawsuit.

The Court: Overrule the objection.

A. I may answer that?

Q. Yes. The Judge has permitted you to answer the question.

A. I was not able to raise as much money as I had from certain people. May I elaborate?

Q. No. The Judge has ruled you cannot say what these people have told you.

The Court: That is right. He cannot, because that would [fol. 126] be hearsay. And there would be many reasons why he couldn't raise as much money, so far as the Court knows or so far as the evidence shows. Now, it is for the jury to determine whether it was as a result of the arrest or whether it was the result of his activities. So that is a matter that is purely speculative to a certain extent.

Q. Do not answer what these people said. Do you know of your own knowledge what your reputation has suffered as a result of the arrest and confinement to the county jail?

Mr. Watkins: We object to that. It is a conclusion on the part of this witness as to whether his reputation has suffered.

The Court: If he knows of his own knowledge, I will let him answer. Overrule the objection.

Q. Father Jones?

A. I know of my own knowledge that in the minds of certain people my reputation has suffered.

Mr. Watkins: That is bound to be hearsay, "in the minds of certain people."

Q. Was this made directly to you? Derogatory statements made directly to you?

The Court: Sustain the objection. Let those people come in and testify themselves.

Mr. Rachlin: May I take the liberty of pressing the point I made a moment ago? The issue as I see it is not the issue of hearsay; it isn't the issue of what these people said—whether it was true or not. He is not testifying whether they said something true or not. He is testifying something was said. He is describing something he observed with the senses. It isn't a case where he said these people have said something true; it is that it was said.

The Court: Sustain the ruling. You would have to bring the witnesses here and let them subject themselves to cross examination. Sustain the objection.

Q. Except for these monetary damages which you have described, did you sustain any other loss of money or income?

A. No.

Mr. Rachlin: All right, Mr. Watkins.

The Court: Take a ten minute recess at this time.

(Ten minute recess)

[fol. 128] Cross examination.

By Mr. Watkins:

Q. Reverend Jones, I do not see the plaintiff Reverend Pierson in the courtroom today. Do you know where he is?

Mr. Rachlin: I know where Reverend Pierson is.

He will be here.

Mr. Watkins: I didn't ask you the question, Mr. Rachlin.

Q. Do you know where Reverend Pierson is?

A. No, sir.

Q. Do you know whether he intends to be back in this courtroom for the trial of this case?



A. No, sir.

Mr. Watkins: We would like to put the plaintiffs and their attorneys on record that we desire to call Reverend Pierson as an adverse witness unless he takes the stand on direct, and would like to have his presence in court.

Mr. Bachlin: I tried to offer Mr. Watkins the courtesy of telling him exactly what was going to happen. He will be a little late but he will be here, I anticipate, within an hour. That is what I wanted to say. It would have solved [fol. 129] the problem.

The Court: Very well. It is on the record now, and that ends it.

Q. Reverend Jones, you are familiar with Exhibit A to Reverend Pierson's deposition, which was a pamphlet which purported to state the purposes of your trip throughout the South, and I hand you that exhibit and ask you if that is not the pamphlet which you had with you and which states the purposes of your trip South.

Mr. Bachlin: I am going to object at the moment because I think there are at least three questions involved in that one phrasing, and I would like, perhaps, Mr. Watkins to separate the questions out.

The Court: His question was whether or not that document states the purposes of the trip. I will let him answer that question.

Mr. Bachlin: Just that question?

The Court: Yes, sir.

Mr. Bachlin: May I ask Your Honor to instruct the witness to answer the question yes or no?

The Court: Yes. You may answer that yes or no, and then hand me the document, Mr. Watkins.

[fol. 130] (Counsel hands to witness)

A. Yes.

The Court: Let me see the document.

Mr. Bachlin: It hasn't been offered.

The Court: No. I can foresee there are going to be objections.

Mr. Rachlin: I have no objection as to offering it.

The Court: I want to see it anyhow.

Mr. Rachlin: Oh, I'm sorry. When I said I had no objection, I didn't mean I had no objection to the admission of it. I will state my objection at a later moment. (Same handed to the Court)

#### OFFER IN EVIDENCE

Mr. Watkins: We offer as Defendant's Exhibit 1 the pamphlet identified by the witness, which purports to state the reasons for their trip South.

Mr. Rachlin: Your Honor, may I be heard?

The Court: You may state your objection. I don't care for any argument.

Mr. Rachlin: We object to the admission of this document, not because we disagree with what it says, but it is improper cross examination; nothing in the direct examination in any way raises any of the questions that come there. Secondly, it is irrelevant and immaterial. The issue [fol. 131] is not their purposes for whether they were in a certain place lawfully or not lawfully, and not where they were coming from and going to and what their purposes were. We don't have to state our purposes in our travels throughout the United States.

The Court: The objection is overruled. I think, Gentlemen, that the background of this lawsuit is such that a wide latitude will be allowed both sides for the introduction of their testimony; and that document, I think, is competent, and for that reason I will overrule the objection.

Let it be marked and received in evidence.

Mr. Rachlin: May I take exception?

The Court: Yes. I might say, Mr. Rachlin, it is not necessary. You have an exception under the Rules, and also, the fact that it is not brought out on direct examination is utterly immaterial because one can cross examine about

anything. So you can have an exception, though, and you can so state it on the record each time, but it is not necessary.

Mr. Rachlin: What I was excepting to was not your overruling the objection, but the comments that Your Honor made.

[fol. 132] The Court: Very well.

(Same received in evidence and marked as Defendants' Exhibit No. 1, which exhibit follows here below:)

**DEFENDANTS' EXHIBIT No. 1**

**WITNESS JONES**

**May 14, 1963**

**Marked for identification to Rev. Peirson's  
deposition 2/15/63 MB**

**Message to the Episcopal Church's 60th General Convention, Detroit, Michigan, September 17-29, From the Clergy on the Prayer Pilgrimage Between New Orleans and Detroit, September 12-17:**

As priests of the Church, we have prepared this statement to interpret the message we bear to the General Convention by our journey from New Orleans. While we speak only for ourselves, we represent the concern of many more Churchmen: those who have given of their substance to make the journey possible and of their prayers to sustain us, and all others concerned that the Church be more truly itself.

Our message to the Church is that the Church must become, in every phase of its life, that which by the grace of God it is—one Holy Fellowship where racial barriers have been done away.

We recognize and share in the Church's appalling failure to express this in its life. We are justifiably chided by the

irreligious for the emptiness of our pronouncements. We are also aware that individual circumstances determine the immediate and direct steps to be taken by Christians in a [fol. 133] particular place, but nothing can be allowed to blurr for us what the perfect Will of God is. We seek by our journey to express our common repentance and witness to His Will.

Since the Church is one, even as the nation is one, we rejoice that our number includes clergy from one ocean to the other and from the Great Lakes to the Gulf. As members one of another in Jesus Christ, we recognize our responsibility for the health of His Church wherever the Gospel is planted; and as citizens of one country we reject sectionalism that would limit the active expression of love for oppressed brothers anywhere. At neither our starting point in the South or our destination in the North, nor in the larger areas they represent, have we any reason for complacency over the quality of Church life in which we all are involved, or its effect in the general community.

At the beginning of our journey we shall see *segregation* in the Body of Christ as found in some of the educational facilities we are to visit. We believe it to be a tragedy that Church schools and colleges ever should have been closed to some, and a tragedy of immense proportions that they have lagged behind the state in the removal of racial restrictions.

At the end of the pilgrimage we shall consider the more subtle and difficult question of *separation*, both within the Church and the community. At a suburb of Detroit we will confer with local clergy on the role of the churches in over-[fol. 134] coming discriminatory housing practices. Men are forced to live in separate areas and they go to separate churches. Our "separate-but-equal" parish system, as it exists in the North as well as the South, is partly a result of the housing pattern, but also a contributor to it. Clerical appointments reflect the fact that we have made parish life an adjunct to racial separation in the community.



Whether with the dying forms of *segregation* or the elusive, but equally fragmenting devices for the *separation* of Christ's Body and the community, Churchmen everywhere have work to do. We are making our journey so that the Church might focus on the needs, and gain renewed understanding of its task. In places where our coming may be regretted by some, we will seek opportunities to confer with the clergy, so that greater understanding may be had by all. We sincerely hope to conclude our pilgrimage without interruption, but we cannot enjoy the luxury of being exempted from consequences born out of our conviction that the Church is one and that we, as Christians, cannot be divided according to the ways of the world. It is in His Name that we go forth, and to Him we offer our selves, our souls and bodies. In these days of world crisis, with darkening signs on all sides, may His Church, at least, be found faithful. Amen.

...

[fol. 135] (Mr. Watkins continues:)

Q. Reverend Jones, this pamphlet you have just identified, which is Defendants' Exhibit Number 1, deplores segregation in your churches, schools and churches in the South, does it not?

Mr. Rachlin: Objection.

The Court: Yes, sustain the objection to that. The document speaks for itself. You may read it to the jury, if you desire.

Q. I want to ask the witness this question: How many of your churches, schools, did you visit in Mississippi on your trip?

Mr. Rachlin: Objection, Your Honor. It is irrelevant.

The Court: Overrule the objection.

A. Repeat it, please.

Q. How many Episcopal schools in Mississippi did you visit on your trip?

A. One school.

Q. Please name the school.

A. All Saints College, Vicksburg, Mississippi.

Q. I will ask you if it is not a fact that at the time of your visit the head of that school was Bishop Allen, who is [fol.136] now Bishop of the Episcopal Church of Mississippi?

Mr. Rachlin: Your Honor, I object to the question as being quite irrelevant to these proceedings.

The Court: Overrule the objection.

Q. Was Bishop Allen not in charge of that school?

A. That isn't the first thing you asked me, exactly. Would you read back?

The Court: (To reporter) Read him the question.

(Question was read by court reporter)

A. He was not Bishop Allen. He was the Reverend Mr. Allen, in that he was not a bishop. And he is not the Bishop of the Diocese of Mississippi; he is a co-adjutor bishop.

Q. What is a co-adjutor bishop?

A. It's an assistant type.

Q. You visited him at All Saints College on September 12th, the day before you were arrested in Jackson on September 13th, didn't you?

A. I visited All Saints College, and he was there, yes.

Q. I want to ask you if on that occasion in your presence he didn't urge your group not to come to Jackson, Mississippi.

Mr. Rachlin: Your Honor, I object to that question as [fol.137] being irrelevant and immaterial and prejudicial. It has no bearing on this lawsuit.

The Court: I will overrule the objection, and, if at the conclusion of all the evidence in the case I will instruct the jury then as to the effect of it. The testimony thus far shows, of course, that he was an interstate passenger.

and as such, of course, had the right to travel as an interstate passenger. But, as I understand the law, it is that while people have certain rights, yet there are limitations on practically every right or every freedom that is given to the people under the Constitution of the United States; and if they abuse that privilege, then the officers, in order to prevent a riot, in order to prevent bloodshed, or in order to prevent any difficulty that they can reasonably foresee, they have a right under the law to direct that people shall move on. And that is going to be one of the issues in this case. Of course, until all of the evidence is in, I can't give the full instructions, and am not instructing the jury at this time, but am stating for the record my reason for permitting a question to be asked and required to be answered which may have no effect and may be entirely irrelevant. If it is irrelevant, then it would have the effect of not being admissible and not influencing the jury in [fol. 138] any way. So, until all of this testimony is in the record for this jury, the Court cannot and will not undertake to lay down a definite rule of what the law is. But certainly the law is that while people have the right to move freely in interstate commerce as long as they are not interfering with the rights of other people, every right of freedom has some limitation. Certainly you are all familiar with Oliver Wendell Holmes' famous statement on freedom of speech. Certainly, under the Constitution, freedom of speech is admissible and is guaranteed by the Constitution of the United States, but as Mr. Justice Holmes said, it does not give a person the right to run into a crowded theater and holler "Fire, Fire, Fire" when there is no fire. There is a limitation on freedom of speech. There is a limitation on practically every freedom that we have. That is the question that is going to come out in this case as to whether or not these officers violated the law and unlawfully committed a wrong on these people, these plaintiffs. Then when all this evidence is in and the argument of counsel to the jury is made, I will instruct the jury fully

as to what—and definitely—as to what the law and rights of each party is. So for that reason, I overrule the [fol. 139] objection.

Mr. Rachlin: Your Honor, with all due respect to Your Honor, may I ask that Your Honor's remarks be stricken from the record as beyond the scope of Your Honor's authority.

The Court: Yes, sir.

Mr. Rachlin: Thank you, Your Honor.

The Court: You are very welcome, and the objection will be overruled.

(Mr. Watkins continues:)

Q. My question; Reverend Jones, was: Did not Bishop Co-Adjutor Allen on your visit the day before you were arrested, at All Saints in Vicksburg, urge your group not to come to Jackson, Mississippi?

A. Apparently, the Bishop Co-Adjutor is not too familiar with bus travel. I would presume he drives an automobile more, because after urging us not to come to Mississippi had no answer—not to come to Jackson—had no answer as to how we could get to Chattanooga by bus without going through Jackson.

Q. Weren't you in a chartered bus?

A. Yes, sir.

Q. Then I interpret your answer to that question to me [fol. 140] to be that Bishop Allen did urge your group not to come to Jackson, Mississippi. Is that correct?

A. With the specifications that I added, yes. This was not the only thing he did, you know. We had a long, long talk.

Q. In spite of his urging or his advice to your group that day, you did come to Jackson, didn't you?

A. The bus was—

Mr. Rachlin: —Your Honor, I object to that question. This becomes an argument at this point.

The Court: Overrule the objection.



**Q.** You did come to Jackson, didn't you?

**A.** The bus was chartered to Jackson; we came to Jackson, where we were then to transfer to public transportation to go to Chattanooga and then to Detroit. We came to Jackson.

**Q.** On your trip to Jackson, did you call on Bishop Gray, the head of the Episcopal Church in Mississippi?

**A.** No, sir. Bishop Gray was in the hospital, as I recall.

**Q.** Did you call on any Episcopal minister in the City of Jackson during your trip?

**A.** Episcopal ministers called on me in your jail.

**Q.** I didn't ask that question, and maybe I had better limit it. Before you were arrested and before you were in [fol. 141] the act of attempting to leave Jackson, did you call on any Episcopal minister in the City of Jackson?

**Mr. Rachlin:** Objection, Your Honor.

**The Court:** Overrule the objection.

**A.** We got into Jackson late at night and came to catch a bus the next morning. It would have been too late to call on any ministers that night, and the next morning we had a scheduled bus to catch. And that is the answer, that we did not call on any ministers previous to arrest.

**Q.** Reverend Jones, in Exhibit 1, the pamphlet explaining the purposes of your trip, there is a sentence which reads, "In places where our coming may be regretted by some, we will seek opportunities to confer with the clergy so that greater understanding may be had by all." Why did you anticipate that your presence would be regretted by some?

**A.** There are sinfully in the Episcopal Church some clergymen who deny the rulings of their church and of Jesus Christ and believe in segregation, and I would presume that in their state of sin they would regret my coming.

**Q.** But as the statement indicates, you didn't call on any of those members of your clergy in Jackson, did you?

**A.** Very difficult from jail, sir. I made remedy and attempted by pleading innocent. If I had been found innocent

[fol. 142] in Mr. Spencer's court, I would have had the opportunity to call.

Q. I thought that you said that if you hadn't been arrested on the 13th you would have been on your way to Chattanooga?

A. Exactly.

Q. Would you have called on any minister in Jackson?

A. Oh, no. This was not on our itinerary. We had called on other ministers. In McComb, for instance.

Q. You knew before your trip of the violence that had resulted from groups of people who called themselves Freedom Riders which went into Alabama, did you not?

Mr. Rachlin: Your Honor, I object to that question as being inflammatory, serving no purpose here whatsoever, and meant just to incite and inflame the jury, and I move it be stricken.

The Court: Overrule.

Q. Do you know the question?

A. Would you repeat it, please, Mr. Watkins.

Q. You knew before your trip to Jackson of the violence that resulted from the groups that called themselves Freedom Riders and went into Alabama, did you not?

A. I heard the mayor say last night there was no violence. [fol. 143] Q. I want to ask you, Reverend Jones, if I didn't ask you that same question on your deposition taken on February 15, 1963, here in the City of Jackson, and if your answer was not "I had read of such in the papers"?

A. That's what you asked me, and that's what I answered.

Q. Sir?

A. That is what you asked me in my deposition, and that is what I answered.

Q. Is it the truth?

A. I had read of such in the papers.

Q. You knew that hundreds of people who called themselves Freedom Riders had already visited Jackson, didn't you?

A. I had read of such in the papers.

Q. Did you endorse and approve the purposes and activities of those groups which called themselves Freedom Riders?

Mr. Rachlin: Your Honor, I object. What has that got to do with this case? This is purely—

The Court: I overrule the objection. I think it is material and competent. If it will help you any, I will give you a standing objection to questions of this type, and it will be overruled and you won't waive your objection by failure to renew. I think all of that is competent in the trial of this lawsuit, and I am going to let it in. You may have a stand-[fol. 144] ing objection if you desire or you may raise objection to each question.

Mr. Rachlin: Your Honor, I think I will continue my right to object at particular questions.

The Court: Very well.

Mr. Rachlin: But—

The Court: —And I overrule that objection.

Mr. Rachlin: But I do think Your Honor is—I withdraw.

The Court: I understand, Mr. Rachlin. I know your objection, and you think I'm wrong, but I think I'm right.

Mr. Rachlin: If you will permit me the liberty, it's not merely that you overrule my objection, but it's the comments you make in or over my objection which themselves, I think, are incompetent, if you will forgive me.

The Court: I will forgive you, and I will adhere to what I have stated in the record and allow you exception to that. And what I was trying to do was to give you a standing objection to testimony of this type and character, because I think it is competent in the case. If it is not competent, then, of course, at the conclusion of all the testimony, I would certainly exclude it and instruct the jury to disregard it. And I'm familiar with that principle of law. It's difficult [fol. 145] to eradicate testimony once it has gone in. So now, so that we don't have to argue with each other, if you will make your objection, I will rule without comment, provided

you don't—and I'll let you state your grounds in the record—but I don't care to hear an argument unless I call for it.

Mr. Rachlin: Thank you, Your Honor.

Q. Do you remember the question, Reverend Jones?

A. I'm sorry, sir. You're going to have to re-read it to me.

Q. Having already told me that you knew of the visits into Alabama and of hundreds into Jackson before you made your trip, my question was: Did you endorse and approve the purposes and activities of those groups which called themselves Freedom Riders?

A. Publicly I did not approve or endorse those groups who called themselves Freedom Riders; however, privately, in my own conscience and in my prayers, I approved of some of those people who called themselves Freedom Riders. I have no idea as to the truth of the reports that I read in the papers, but I did read that the character of some were questionable, such as charges of prostitution and communism, and I could not even in the privacy of my conscience and prayers privately approve of those kind of [fol. 146] people doing anything except changing their ways.

Q. You have told us you disapproved of the character of some of the Freedom Riders, but do I understand that you thoroughly approved of the purpose and activities of the Freedom Riders?

A. I repeat, sir. Publicly I did never endorse or approve of the activities of some of the alleged Freedom Riders. Privately in my conscience and in my prayers I did approve of some whose characters were the kind of people that I could approve of.

Q. And you felt so strongly on that subject, did you not, Reverend Jones, that you thought the Freedom Rider activities of others in your group should be carried out even if violence resulted, didn't you?

Mr. Rachlin: Object to the question. There is no such inference.



The Court: Overrule the objection.

Q. Do you want me to re-read the question?

A. No, I heard you very well, sir. I also remember that I told you in the deposition when—and I would like to tell you now—and that is that I resent my prayer pilgrimage activities being put in the same sentence with "other Free-[fol. 147] dom Riders." I am not a Freedom Rider, I have never been a Freedom Rider, and I ask you again now, as I asked you before: Please, sir, do not leave those begging questions to me because it is not true.

Q. I want to ask you, Reverend, if your answer to that specific question in the deposition was not, and I quote: "I would have to look at the particular situation and weigh the evils."

Question, "You did that, didn't you?"

Answer, "I did."

I will ask you if those weren't the answers to the questions about how you felt about the Freedom Riders in your group? And I'll do better than that; I'll show you Page 17 of your deposition with the questions and answers on it.

(Hands to witness)

Mr. Rachlin: May I request through you that Mr. Jones have the liberty of reading the very next page that Mr. Watkins is referring to?

The Court: Yes. You may read the next page also.

Q. If you are going to read anything, I would like for you to pick up with the questions I asked you; read that question, your answers and the following questions.

[fol. 148] The Court: Yes, I will let him answer that question first that Mr. Watkins propounded, and then if he wants to read the following page, he may do so.

Mr. Rachlin: Thank you.

A. You want me to read that aloud?

The Court: The question is, did you—were those questions propounded and were those your answers?

A. (Reading) "Question: And you felt so strongly on that subject that you thought the Freedom Rider activities of others and your group should be carried out even if violence resulted, didn't you?"

"Answer: I repeat, I would have to look at the particular situation and weigh the evils.

"Question: You did that, didn't you?"

"Answer: I did.

"Question: You felt strongly enough about it that you thought the activity of the Freedom Riders and your group should be carried out even if violence did occur, didn't you?"

"Answer: I never suggested and I would really appreciate it if you would stop trying to equate our prayer pilgrimage with a Freedom Ride. I resent this 'you and other Freedom Riders,' 'Stop beating your wife' questions that [fol. 149] you continually come forth with. I resent them very much, sir. I am not a Freedom Rider. I participated in a religious prayer pilgrimage, and I know nothing about 'other Freedom Riders.' I have no connection with Freedom Riders."

Q. At the time you made that statement, Reverend Jones, were you familiar with the Redbook article telling about your trip South, entitled "Rebel in the Rockefeller Family"?

Mr. Rachlin: Objection. Are we trying on the magazines too? Is that the idea?

By the Court: Overrule the objection.

Q. Were you familiar with that story of your trip south?

A. My familiarity was that I had heard that there was an article. I had never read it, and I have not since.

Q. You did know that there was published in the year 1962 a lengthy article by Redbook Magazine with details and quotes and the purposes of your trip South? You knew of the existence of the article, didn't you?

A. Which question are you asking? The details or—

Mr. Rachlin: Reverend Jones, please. Your Honor, there

are so many objections to that question that I don't know where to start. First, it's argumentative. The witness has [fol. 150] already answered the question that he never read the article then or since. Secondly, it's irrelevant. Thirdly, it is argumentative; and, fourthly, I think it is inflammatory and should be restricted, despite all the previous rulings Your Honor has made.

The Court: Yes, I sustain the objection to that.

Mr. Watkins: Your Honor, he said that he had not read it. I would like to show that he knew of its existence and has deliberately not read it.

Mr. Rachlin: What of it? What kind of nonsense is this?

The Court: That would be immaterial. I sustain the objection.

Q. Who represented you as attorneys in your trial in the Municipal Court—

Mr. Rachlin: Objection, Your Honor, as irrelevant. It's unimportant who represented them.

The Court: Overrule the objection.

Q. Surely, that is not a hard question, Reverend Jones.

A. I'm sorry. I have drawn a blank. Just a minute. Just give me a minute to think. His last name is Young, and I [fol. 151] can't remember his first name.

Q. Jack Young?

A. His name was Jack Young, and he was assisted by an attorney named Carl Rachlin.

Q. That's the gentleman standing right here by me?

A. Yes, Mr. Watkins?

Q. Is it this Mr. Rachlin?

A. Yes, sir.

Q. And you knew at that time and you know now that this gentleman, Mr. Rachlin, is general counsel for CORE?

Mr. Rachlin: That is irrelevant. I would no more ask that question than ask Mr. Watkins what murderers he has defended. Since when are we trying the lawyers in this case?

The Court: Overrule the objection.

Q. My question was—Do you remember the question?

A. Yes.

Q. You knew at that time and now know he is general counsel for CORE, don't you?

A. I did not know he was general counsel for CORE then, and I do know it now.

Q. Who furnished his services to you in Municipal Court?

A. I have no idea.

[fol. 152] Q. You didn't, did you?

A. No, sir.

Q. Did you request a jury trial in the Police Court?

Mr. Rachlin: Objection, Your Honor. What consequence is that?

The Court: Overrule the objection.

A. No, nor was it offered.

Q. Did either of your attorneys request a jury trial in the Municipal Court?

A. No, nor was it offered.

Q. Your church, Reverend Jones, practices separate but equal facilities for the two races both in the North and in the South, doesn't it?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule the objection.

A. Sinfully and contrary to all regular authority imposed in our church, the answer to that question is yes.

Q. Have you ever taken a segregated church in the North or the South, or a segregated school of your church in the North or the South, and tried to bring an equal number of the other race in and thereby physically integrate it?

[fol. 153] Mr. Rachlin: Your Honor, I object to the question. I think we are not trying schools; we are trying a case in a bus station.

The Court: Overrule the objection.



A. No, sir.

Q. In your pamphlet explaining the purposes of your trip to Jackson, Mississippi and South, you complain of separate housing facilities for white and colored people, don't you?

Mr. Rachlin: Objection.

The Court: Overrule the objection.

Q. Do you remember the question, Reverend?

A. I would appreciate your repeating it, sir.

Q. You complain of separate housing conditions for white and colored people, don't you?

Mr. Rachlin: I have stated my objection to that question, Your Honor, as being irrelevant and incompetent.

The Court: I overrule the objection.

Q. What is your answer?

A. Yes, sir.

Q. And that situation exists in your home state and [fol. 154] community, doesn't it?

Mr. Rachlin: Same objection, Your Honor. Same reasons.

The Court: Overrule the objection.

A. It does not exist in my own community that I live in as a part of Chicago, but it does exist in some parts of Chicago and some parts of my home state, Illinois.

Q. And those conditions were existing in Illinois and in some parts of Chicago when you came on this pilgrimage, weren't they?

Mr. Rachlin: Same objection and same reason.

The Court: Overrule the objection.

A. Yes, sir.

Q. Don't you think, Reverend Jones, that your activities could have been better spent by trying to correct what you considered improper discriminatory practices in Illinois, rather than coming to Jackson, Mississippi?

Mr. Rachlin: Your Honor—

The Court: Sustain the objection to that question.

Mr. Rachlin: May I be heard on this question?

The Court: I sustained the objection.

[fol. 155] Mr. Rachlin: Oh, I'm sorry. You'll forgive my shock, Your Honor.

The Court: Very well, proceed.

Q. Reverend Jones, I want to refer you to what has been offered in the deposition as Exhibit B to Reverend Pierson's deposition, which are a list of demands reported by The Daily Worker of May 26, 1928, nine in number, of the Communist Party, and I want to ask you whether or not you are in agreement with any or all of those demands.

Mr. Rachlin: Your Honor, I must strenuously object to this question. It has no purpose in this hearing. Father Jones has already stated his position with regard to Communism. This question can have no useful purpose. It is deliberately done to excite a jury in a case like this, and I seriously object to the question. And I ask that you give special instruction to the jury that it be stricken from their minds and, if necessary, I will move for a mistrial for the question being asked.

Mr. Watkins: I would like for the Court to read the nine demands.

(Hands to Court)

[fol. 156] (Court reads same)

The Court: What was the question?

Mr. Watkins: Did he agree with any or all of those nine demands contained.

The Court: Overrule the objection.

Mr. Rachlin: I move for a mistrial on the grounds that the document is truly inflammatory and serves no purpose, and that Your Honor's ruling helps contribute to the inflammatory nature of this trial. This is purely a question where the defendants are charged with false imprisonment,

not whether the Communist Party in 1920 said something or other, as Father Jones has already indicated his position in regard to Communism.

The Court: I overrule the objection without comment.

Mr. Rachlin: What about my motion for mistrial?

The Court: Overrule the motion for mistrial.

Q. Father Jones, I hand you quotation from The Daily Worker of May 26, 1928, which purports to set out nine demands of the Communist Party. I will ask you if there are any of those demands with which you agree or any with which you disagree.

A. You want to re-explain to me what The Daily Worker is?

[fol. 157] Mr. Rachlin: Your Honor, let the record show that, pursuant to my promise, the plaintiff Father Pierson has entered the courtroom within the time I suggested that he would, and he is presently here and available.

The Court: Very well.

Q. The Daily Worker, I think you know and I know, is a paper published.

A. Well, now, I have never seen a copy of The Daily Worker, sir. Have you? I mean, I don't know.

Mr. Watkins: I submit that has nothing to do with the question. I have submitted—

The Court: The question is, Father, whether or not you agree with those statements there / in that document.

The Witness: May I ask you something, Your Honor?

The Court: You may read the document and then answer whether you agree with those statements in it. You can ask me anything.

The Witness: May I?

The Court: Yes.

The Witness: I don't know what The Daily Worker is. I have never seen such a copy, and I have no assurance

this is even something from this newspaper, whatever [fol.158] he is talking about.

The Court: Well, you can answer the question, Father, whether you agree with the statements or don't agree.

The Witness: In other words, I am forced to read this piece of paper which purports to be something from some kind of an organization from some newspaper I don't know anything about, and I have to tell you whether or not I agree with these principles?

The Court: Yes, sir, just like he asked you a question.

Q. Reverend Jones, before you read that, you saw that in my office when your deposition was taken on February 15th.

A. I beg to disagree with you, sir. You did not present this to me.

Q. Weren't you in the room and see and hear the other witnesses?

A. Sitting as far from here as the jury is, and—

Mr. Rachlin: —Your Honor, what kind of colloquy is this between a witness and an attorney?

The Court: Sustain the objection as to whether he saw it when Father Pierson's deposition was being taken, but I will give him an opportunity to read it. If he hasn't seen it, as he said, then I will direct that he answer the question [fol.159] whether he agrees or disagrees. So you may read it, Father.

Mr. Rachlin: I want to note another objection, which Father Jones himself indicated, that we have no guarantee of the authenticity of this document, and we are being asked a question about a document which we have no assurance that it exists.

The Court: Let the objection be noted. The objection is overruled.

A. May I read it aloud?

The Court: You may if you want to; you are not required to, because the question propounded to you is whether or not you agree or disagree.



A. The Daily Worker, May 26, 1928, Page 6. I was one year old.

Q. I didn't ask you that.

A. (Reading) "Abolition of the whole system of race discrimination and full racial equality."

I and my church, the Episcopal Church of the United States of America, agree with that as so stated.

Q. Go right ahead.

A. "Abolition of all laws which result in segregation of Negroes; Abolition of all Jim Crow laws. The law should [fol. 160] forbid all discrimination against Negroes in selling or renting houses."

The Episcopal Church and I as a priest of that church agree with that statement.

Q. Go right ahead.

A. "Abolition of all laws which disenfranchise the Negroes on grounds of color."

The Episcopal Church and I as a priest of that church agree with that statement.

"Abolition of laws forbidding intermarriage of persons of different races."

The Episcopal Church has not spoken on this issue, and I have not made up my mind as to how I would feel on that issue.

Q. You have no opinion on it?

A. I have no opinion.

Q. Go right ahead.

A. "Abolition of all laws and public administration measures which prohibit or in practice prevent Negro children or youth from attending general public schools or universities."

The Episcopal Church, apparently our country, and I as a citizen and a priest of the church agree with that statement [fol. 161].

"Full and equal admittance of Negroes to all railway station waiting rooms, restaurants, hotels, theaters."

Apparently our country and my church, and as a citizen and priest of both, I would agree with that statement.

"The War and Navy Department of the United States Government..."

—Are these departments still in existence as such?

Q. I think we still have a War Department and a Navy Department.

A. "... of the United States Government should abolish all Jim Crow distinctions in the Army and Navy."

That's been done, sir. I guess I would have to agree with that. It's already done, by President Truman in 1948. I don't know whether he read this document, but he was the president of our country, and he did that.

Number 8, "Immediate removal of all restrictions in all trade unions against the membership of Negro workers."

I would agree with that.

"Equal opportunity for employment, wages, hours, and working conditions for Negro and white workers."

And I would agree with that, and I would also say that [fol. 162] apparently this is a copy from the Library of Congress, and I hope you are not going to assume the Library of Congress' guilt by association by having it in their areas.

Q. As I understood you, you agreed with eight of those demands and had not made up your mind on the ninth one?

A. That is correct.

OFFER IN EVIDENCE AND OBJECTION THERETO SUSTAINED

Mr. Watkins: We offer that as Defendants' Exhibit 2.

Mr. Rachlin: May I see it?

(Counsel hands to counsel opposite)

Mr. Rachlin: Before I agree or disagree with the admission of this document, may I question the witness about it?

The Court: Yes, sir.

**Examination.**

**By Mr. Rachlin:**

**Q.** Father Jones, you didn't make any comment with regard to the introductory remarks above the words.

**Mr. Watkins:** I didn't ask about that. I asked about the nine demands as such. If he wants to question him about it as his own witness, he can do that.

**The Court:** Instead of letting him take him on redirect after you get through, I'm going to let him do it now.

[fol. 163] (Mr. Rachlin continues:)

**Q.** Would you read it?

**A.** "Daily Worker, May 26, 1928, Page 6. The Communist Party considers it as its historic duty to unite all workers, regardless of their color, against the common enemy, against the master class. The Negro race must understand that Capitalism means racial oppression and Communism means social and racial equality."

Now, I am not a Communist; I disagree with the *Communist* party principles; I am against their working in our country to unite workers under their system for any cause. I am a member of a capitalistic system. I own a few stocks and bonds, and I would like to own more; and capitalism does not mean racial oppression; communism does not mean social and racial equality. Witness the terrible class systems and what those people have done to Hungary and to Czechoslovakia and other such places, and I in no way agree with the principles of the Communist Party. It seems to me, sir, that it's sort of like presenting to me a document of the Russian Orthodox Church, where it says, "I believe in Jesus Christ," and you'd say, "Do you agree with that principle that that Communist agrees [fol. 164] with?" and I'd say, "Sure, I believe in Jesus Christ," and if he happens to believe in it, I'm glad he does, but that doesn't mean I'm a Communist, because on some things we hold similar views.

Mr. Watkins: I don't recall that anybody asked you whether you were a Communist.

The Witness: But I said—

The Court: Just a minute, Gentlemen. Let me interrupt there. He has offered that in evidence. Is there any objection?

Mr. Rachlin: I object to the document on the grounds I previously stated at the time I moved for mistrial.

The Court: I wouldn't sustain it on that ground, but it is not properly authenticated as a document to be admissible in evidence, so that if you object to it on the ground it is not properly authenticated to be a correct copy out of the Library of Congress, then I would sustain the objection.

Mr. Rachlin: Well, I previously objected on that ground, Your Honor.

The Court: Very well, then. I sustain the objection, Mr. Watkins.

[fol. 165] Mr. Watkins: I remind the Court that counsel himself has questioned the witness about parts of this document and even had him read parts of it into the record.

The Court: That oral testimony has gone in the record, and that is in. He testified as to whether or not he agreed, and I think that was competent. But the document itself is not admissible because it is not properly authenticated.

#### Cross examination.

By Mr. Watkins continued:

Q. Father Jones, who provided the funds for your trips to Jackson?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule the objection.

A. I provided the funds for my trip to Jackson.

Q. Did any organization reimburse you?

Mr. Rachlin: Objection.

The Court: Overruled.



A. No, not on the original trip.

Q. You didn't pay for the original trip at all, did you?

A. I just got through telling you that I paid for the original trip out of my own pocket and was not reimbursed.

Q. You mean that ESCRU did not provide any of the [fol. 166] funds for your original trip?

Mr. Rachlin: The witness answered the question. He is just arguing.

The Court: Overrule the objection.

A. On the original trip to Jackson, I paid my own way.

Q. And you were not refunded by any organization?

Mr. Rachlin: Same objection.

The Court: Overrule the objection.

Mr. Rachlin: This is the second time the question has been asked in those words.

The Court: Counsel, you have practiced law long enough to know that on cross examination the first answer a witness gives is not necessarily taken. The cross examiner is allowed to inquire further as to the truthfulness and untruthfulness, and for that reason I overrule the objection.

A. I was not reimbursed.

Q. Any part of it?

A. Of the original trip.

Q. Were you reimbursed any of your expenses on the next two trips?

[fol. 167] A. Yes, sir. After I was illegally arrested and illegally convicted and illegally incarcerated and then appealed, and then was forced to come back for arraignment, which cost a lot of money I didn't have, and forced to come back for a trial, which cost a lot of money I didn't have, I was reimbursed for that, yes, sir.

Q. By whom?

A. By the Episcopal Society—ESCRU. I don't belong to this organization.

Q. It is ESCRU?

A. Yes. And I'm not quite sure what it really is.

Q. When the \$500.00 bond money was refunded to you, what did you do with that?

A. I sent it back to ESCRU.

Q. Had ESCRU furnished it in the first place?

A. Apparently the people in Chicago, my home town and diocese, who raised the money, had forwarded it to Atlanta, and they in turn had forwarded it to Mr. Young, who finally got me out on bond.

Q. So your bail money was posted by ESCRU also?

A. My bail money was posted by Attorney Young, and apparently all they were was an intermediary, the same perhaps as the postman.

[fol. 168] Q. You went to New Orleans before you came to Jackson, didn't you?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule the objection.

A. Yes, sir. I went to New Orleans, Louisiana, the place where the prayer pilgrimage began.

Q. You were enroute to the church convention in Detroit, Michigan, weren't you?

A. That was our ultimate destination, Mr. Watkins, yes, sir.

Q. Your home was in the State of Illinois, wasn't it?

A. Yes, sir, and still is.

Q. Did you consider New Orleans, Louisiana, on the way from Illinois to Michigan?

Mr. Rachlin: Objection. The man doesn't have to account for his travels.

The Court: I overrule the objection.

A. Mr. Watkins, I wanted to go to Detroit, Michigan, where my church was meeting in general convention, by means of a prayer pilgrimage. Now, this is not uncommon; prayer pilgrimages go to Our Lady of the Lourdes in France, and although I probably could fly directly from

[fol. 169] Chicago to Paris, if a pilgrimage would start in London, I would fly to London and join the prayer pilgrimage to Lourdes. Any religious prayer pilgrimage has to start someplace. It may be out of the way for some people going to it, but that's the way pilgrimages are. It's a long religious tradition, sir, of many hundreds of years. And although it was not on the way, I had to go to New Orleans to get on the pilgrimage.

Q. What time on what day did you reach New Orleans?

A. I arrived by jet aircraft on the evening of May 11th.

Q. Wasn't it September?

A. —I'm sorry. September 11th, yes. Thank you.

Q. That was at about six o'clock P.M., wasn't it?

A. Approximately, yes, sir.

Q. That plane reaches New Orleans about five minutes after it leaves New York, doesn't it, with the difference in time?

A. I wouldn't be able to tell you about any plane that leaves New York, because I didn't come from New York; I came from Chicago. I could not give you the exact departure time or arrival time because I don't have the tickets with me.

Q. That is all right. Did you attend the workshop for your group, the meeting for your group held the night of [fol. 170] September 11th in New Orleans?

A. I arrived at a YMCA, Young Men's Christian establishment, and there were a group of people there. Some were talking in corners; some were in sport clothes; some in collars. I stayed about five minutes because I immediately saw some old friends of mine that were clergymen, and left.

Q. What time did you get to that meeting?

A. Around five of nine, maybe.

Q. What time had the meeting started?

A. I have no idea, sir. I wasn't there.

Q. Didn't you hear the talks that were made at the meeting?

A. I don't even know if any talks were made. If I wasn't there, how could I hear any talks?

Q. Haven't you heard the other plaintiffs in my presence tell me in detail about those talks that were made at that meeting?

A. I thought that was hearsay. Do you want me to tell you what I heard them say?

Q. If I ask you for a statement made by these other plaintiffs in my presence, you may feel free to tell it. You did know about that, didn't you?

A. I heard them speak, yes, sir.

[fol. 171] Q. You know there was a meeting at which talks were made, don't you?

Mr. Rachlin: Your Honor, this is badgering the witness. The witness has stated he wasn't present. The whole line of questioning is irrelevant and incompetent, and I must renew my objection.

The Court: Overrule the objection.

Q. Are you hesitant to tell me that you knew there was a meeting at which talks were made?

Mr. Rachlin: Your Honor, from the nature of this thing, Mr. Jones has said that at the time he was there he didn't know about it. Now he is asking what he learned about it later. What difference does it make what he learned about later, after this lawsuit had started?

The Court: Overrule the objection.

A. There are three questions that have been overruled, and I don't know which one to begin to answer.

Q. Let me ask them over again. You learned after you got to the meeting that earlier in the meeting there had been talks made to the group, didn't you?

[fol. 172] A. No, sir. I learned there had been talks made at the group when I heard your depositions, as you just got through saying. I went into this meeting, saw some people I knew. They were sitting around a room, and we left. Mr. Watkins, I'd like to also say that I had never been to New Orleans, and we left to go see that great city.



Q. In other words, you got into plain clothes and went down on Bourbon Street, didn't you?

Mr. Rachlin: Your Honor, I object to that question. Let Mr. Watkins explain the relevancy of that question.

The Court: Yes, I sustain the objection to that question.

Mr. Rachlin: That has nasty implications—

Mr. Watkins: —No nasty implications. That's exactly what the witness said, that they wanted to see New Orleans.

Mr. Rachlin: I move for a mistrial again on the basis of that statement.

The Court: Overrule the motion for a mistrial, and I sustain the objection to the question.

Mr. Watkins: May I ask him, Your Honor, where he was while the meeting was being held?

The Court: Yes.

[fol. 173] Q. Where were you, Reverend, while the meeting was being held at the YMCA?

Mr. Rachlin: Objection.

The Court: Overrule the objection.

A. In the—I'm not sure when the meeting was held, but I know what I was doing when I got off the train until I got to the—

Q. Where were you between seven o'clock and the time you got to the meeting?

Mr. Rachlin: Objection.

The Court: Overrule the objection.

A. I walked out of the airplane station and made inquiry as to which was more expensive, to go downtown in a taxi or a limousine, and asked if there was public transportation that I could ride. I was accompanied by a brother priest of mine from Chicago. We found that the two of us pooling our resources it was cheaper to take a taxi than to take the limousine, so we went to some place— We asked the taxi driver where would be a good place to get some seafood—we had always heard that the seafood was excellent

in New Orleans—and he took us to some restaurant that had a French name, where we had a very excellent meal. Then I walked not far from there and went in a place called [fol. 174] the Abstinthe House or Absinthe House, or something like that—

Q. —I know what you're talking about.

Mr. Rachlin: Maybe Mr. Watkins can tell us what the name of this place is.

A. —and I met a man by the name of Kelly who grew up in Chicago who was a bartender there. And he told me the history of this famous place, and I tasted some of that beverage, which he assured me was not the same as it had been in the good old days, as he called them. Then I looked for a taxi and I started to get in a taxi and the man told me to get out. And I had originally thought it was some reason they didn't like a priest or something; I later learned that I got in the wrong color taxi. I then got in another taxi and went to the YMCA that I just originally told you about.

Q. Thank you. I believe that is all.

Mr. Rachlin: Your Honor, at this time I would like to move that the entire cross examination from the first question until the last be stricken as being incompetent, irrelevant, immaterial, improper, and in violation of all the rules of evidence known to man. I have never in my life heard [fol. 175] a cross examination that was as irrelevant as this one, and I move it be stricken.

The Court: I overrule the motion. Any redirect examination?

Redirect examination.

By Mr. Rachlin:

Q. What time of the night did you arrive in Jackson on the night of September 12th? Do you recall?

A. It was dark. May have been eight or nine o'clock that night.

Q. I take it from your testimony you left the next morning? Is that right?

A. Yes, sir.

Q. Did you have any plans to stay in Jackson at all?

A. No.

Q. Is it fair to say then that Jackson was merely a place that you were passing through on your way to your next stop?

A. Jackson was the terminal point we had chartered a bus. Originally we had hoped that enough people would come on the bus to defray the cost. In other words, you have to have 37 people to pay for a bus, and when only 28 came it was cheaper to just charter it to Jackson and then buy just ordinary tickets on to Chattanooga and Detroit. [fol. 176] Q. Did you have business in Chattanooga?

A. Yes, we were to visit a number of Episcopal institutions—St. Mary's Church and Academy, run by Sisters of St. Mary—by the way, those sisters raised my mother in an orphan asylum—We were to visit St. Andrew's Priory, which is a boys school run by Holy Cross Fathers; we were to visit University of the South, which is the Episcopal University; and we were to visit Sewanee Seminary, which having come from another seminary, I was also very anxious to see.

Q. In the State of Mississippi, I believe you said you visited a school at Vicksburg and the church at McComb?

A. Yes, sir.

Q. Now, your next trip back to Jackson to arrange for your trial, the money was loaned to you by ESCRU? Is that correct?

A. On the—?

Q. For the arraignment and your trial before Judge Moore. I believe you said you didn't have the money and the money was loaned to you by ESCRU?

A. I don't know if it was loaned. I borrowed the money from St. Lennox House, and then ESCRU paid back St. Lennox House for that money. I don't know if it was loaned. I don't know if I have to pay it back or not.

[fol. 177] Q. Do you feel any obligation to return that money for having paid for your trip?

A. I would like very much to do so, but I don't have it, personally, to do so.

Q. If the jury awards you a verdict in this case, will you return that money?

Mr. Watkins: We object to that.

The Court: Sustain the objection.

Mr. Rachlin: I think, Your Honor, it is proper. If he feels an obligation to return the money—

The Court: I think that is improper. Sustain the objection.

Mr. Rachlin: No further questions.

The Court: (To witness) You may stand aside.

Gentlemen of the jury, under the instructions I gave you yesterday, I will let you separate again today for lunch and be back at one thirty. Court is recessed until one thirty.

(Noon Recess)

[fol. 178]

## VOLUME II

(After Recess)

JOHN B. MORRIS, called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Rachlin:

Q. Mr. Morris, would you mind telling us where you live?

A. Atlanta, Georgia.

Q. The exact address?

A. 4655 Jet Road, Northwest.

Q. How long has Georgia been your home?

A. All my life.



Q. Where were you born?

A. Brunswick, Georgia.

Q. With whom do you live in Atlanta?

A. My wife and three children.

Q. You are an ordained priest of the Episcopal Church?

A. Yes.

Q. Give us a little bit of the background?

A. I was ordained a priest in 1955 and served for four years in a parish in South Carolina. I'm canonically a priest under the Bishop of South Carolina. I'm licensed by the Bishop of Atlanta to officiate there.

[fol. 179] Q. Are you associated with any organization at the present time or employed by or with any organization at the present time?

A. I'm the executive director of the Episcopal Society for Cultural and Racial Unity.

Q. Would you mind telling us what the address of this society is?

A. 5 Forsythe Street, Northwest, Atlanta.

Q. How is this organization commonly called in daily parlance?

A. The Episcopal Society, or it's called ESCRU, as the letters in abbreviated fashion spell out.

Q. Does this society have members in all of the United States?

A. We are a national organization within the Episcopal Church.

Q. I'd like to draw your attention, if you don't mind, to a period around September 13, 1961. Do you recall where you — Were you in Jackson, Mississippi, that morning?

A. Yes, sir.

Q. Did you have a destination that day, late that day?

A. We had the immediate destination of Chattanooga, and we were subsequently going to Detroit.

Q. Did you have or own a ticket on a Continental Trailways bus to Chattanooga?

A. I had a ticket to Chattanooga.

Q. Approximately when was it that you arrived in the [fol. 180] vicinity of Continental Trailways bus station?

A. About 11:25 that morning.

Q. How many of you were there?

A. 15.

Q. By what method did you reach the bus station?

A. The 15 of us by taxi.

Q. About how far was it from the point where the taxicab let the 15 of you off to the entrance to the bus station?

A. I would say 50 to 75 feet, 60 feet or so.

Q. Did you all walk to the entrance of the bus station from the taxicab?

A. Yes.

Q. Approximately how long would it take—Strike that. How long did it take you to walk that distance you have just described from the taxicab to the entrance to the bus station?

A. I shouldn't imagine more than 45 seconds or a minute, something like that. We didn't waste any time. We wanted to eat and went right on in.

Q. Well, did it take you 45 seconds or a minute?

A. I would say a minute.

Q. Did you observe any numbers of people following you on the street as you approached the bus station?

[fol. 181] A. We observed no one following us nor any aggregation of people either.

Q. You then, of course, observed no hostile signs from anybody in the vicinity as you walked together toward the entrance? Is that correct?

A. Yes, that is correct.

Q. Of the 15 of you, how many were white persons?

A. 12 were white.

Q. If you recall, how many Negro?

A. Three.

Q. Were the other plaintiffs besides yourself—that is, Father Jones, Father Pierson and Father Breeden—in this group of 15?

A. Yes.

Q. As you entered the bus station, were you among the first or back toward the rear of the group of 15?

A. I was toward the front part of the group, but there were three or four in front of me, I think.

Q. Then did you yourself enter the bus station?

A. Yes.

Q. Behind three or four?

A. Yes.

Q. Did the others enter behind you?

[fol. 182] A. Yes.

Q. Will you describe in your own words which direction did you go after you entered the entrance?

A. We walked in the front door and turned toward the left where we observed the coffee shop was down to the left through a door, and we headed toward the coffee shop.

Q. As you entered, did you observe any police officer?

A. Two standing near the front door.

Q. Did you pass by them as you walked toward the entrance of this coffee shop?

A. Well, somewhat, yes. They weren't in the way or anything. They were just standing there looking out the front door.

Q. Were they very close to the front door?

A. Fairly so, yes.

Q. Would you describe how many feet they were from the front door?

A. No more than, I'd say, eight feet.

Q. Did you walk between them and the news stand, or were they on the news stand side and you walked around them?

A. No, it was between them and the news stand, because they were standing directly/in front of the front door, and we came in and turned to the left toward the coffee shop, so the news stand was still on our left and they on our right.

[fol. 183] Q. You were here this morning then when Father Jones testified, weren't you?

A. Yes.

Q. I assume you heard his testimony as to what conversation he overheard between the policemen?

A. I heard his testimony.

Q. Did you overhear it?

A. I did not overhear what was reported there.

Q. Now, would you know and be able to identify the two policemen whom you passed in the bus station at that moment?

A. I would.

Q. Can you identify them in this courtroom?

A. Officers Griffith and Nichols.

Q. Are they the defendants sitting just before the bar there?

The Court: Call it a rail.

Q. The rail. Those are the two gentlemen you observed in the station at that time?

A. That's correct.

Q. Chief Ray wasn't there at that time, was he?

A. Not then, no.

Q. What happened? Describe what you saw or what anybody said to you and what you said to anybody at that time: [fol. 184] Just using your own words as briefly as you can, describe what happened?

A. Well, I said I was among the first four or five or so in the group, and we were coming to catch a bus some 30 or 40 minutes later. We were hungry; we had breakfast quite early that morning. We turned to the left, headed for the coffee shop, and I was among three or four or five who had gotten through the door.

Q. What door?

A. To the coffee shop. We all were in the terminal then. But when I heard a stir behind me, one of the police officers instructed those of us who had gotten inside the coffee shop to come back out into the terminal area.

Q. Would you mind telling us, to the best of your recol-



lection, how he said to you to / come on out or whatever the words were?

A. I cannot recall the specific words. It was no more than "Come out of there" or "Come back here" or something.

Q. Did you do it?

A. Yes.

Q. Did the others who had gotten into the coffee shop do it too?

A. Yes. There were just a few of us there.

Q. Did you walk back into the main part of the station? Is that the idea?

[fol. 185] A. Back to the door between the terminal waiting room and the coffee shop, where they had detained most of our number before they had come through this door, and I simply rejoined our group there who had been detained and stopped at that point.

Q. Were you able to observe the people in the bus station at this time?

A. Yes. Having come back out of the coffee shop, I was facing into the terminal, and—

Q. What did you see among the people that were in the bus station at the time?

A. I saw nothing more than the normal business of a person en route by bus, coming and going, and I wouldn't say that more than 20 people, all told, were around the terminal, other than ourselves.

Q. Did you have the opportunity to observe whether there were any substantial number of people that followed you into the station?

A. I saw no persons following us in. Whether a few came in and out on their own business, unaware that we were standing over in the corner, I don't know, but there was certainly no evidence of a significant number of persons coming in at any point.

[fol. 186] Q. Did you hear any hostile or angry sounds from the people in the bus station?

A. No.

Q. Could you observe any threatening gestures by people in the bus station?

A. No.

Q. Did you or any of your fellow priests speak in an unusually loud tone of voice?

A. No.

Q. Did you observe any of them commit any acts commonly known as disorderly conduct?

A. No.

Q. Let's go back now. You came back through the entrance to the coffee shop. Will you describe what took place at that point?

A. The two police officers were there and told us to move on out. We said we were hungry; we said we were interstate travelers; we said we would certainly get on our bus after we could get a sandwich. This went on back and forth for a few minutes, and we asked what we had done wrong. We didn't think we had done anything wrong, and they didn't tell us anything we had done wrong.

[fol. 187] Q. You asked them what you had done that was wrong?

A. Yes.

Q. Who was the one who asked that question?

A. I can't recall. Probably several of us asked it. I think I did.

Q. There was not any doubt but it was asked?

A. Yes. We knew we hadn't done anything wrong, and we saw nothing in arrears at the station that would cause any reason for us not to be there, not to have our lunch before going.

Q. What happened after that?

A. After we talked for a while and they said to move on and move on out, and we said, "We will. We'll get on our bus after we eat." And they finally said, "You're under arrest. Wait here." And we waited there.

Q. Do you recall which of the two officers said "You're under arrest"?

A. I'm not certain. I think it was Officer Griffith. Officer Griffith is in the middle there, isn't he?

Q. I am indicating Officer Griffith.

A. Yes. I think it was Officer Griffith.

Q. Officer Nichols was there at the same time?

A. Yes.

Q. Do you recall which of the two officers engaged in most of the conversation?

[fol. 188] A. I think Officer Griffith is the one with whom I had some conversation there at that time. I cannot to the best of my recollection tell you certainly.

Q. In any event, he said you were under arrest?

A. Yes.

Q. Did that include all 15 of you?

A. Yes.

Q. Do you recall whether the plaintiff Father Pierson was in that group?

A. Yes.

Q. Father Jones?

A. Yes.

Q. Father Breeden?

A. Yes.

Q. And of course you were?

A. Yes.

Q. What happened thereafter?

A. Well, having been instructed to wait there—and while we could not understand why they were arresting us and saw nothing wrong in what we were doing—we respected the fact of their authority and didn't attempt to move on at that point when we were ordered to wait. And we waited, [fol. 189] and then we said the Lord's Prayer together, and about that time Captain Ray came.

Q. Now Chief Ray?

A. Now Chief Ray.

Q. And indicating the gentleman to my right in the white shirt?

A. Yes.

Q. —One of the defendants in this case.

A. Yes.

Q. Up to the moment that Chief Ray arrived, did you have an opportunity to observe people in the bus station again?

A. I had to observe because we were confused, upset and disturbed over our being detained in this pilgrimage and our itinerary to Chattanooga, but I didn't get up on a chair and look around, but there was nothing anywhere to provoke my curiosity other than to just normally observe that it looked like a bus terminal in a course of a day's business.

Q. Was there a substantial number of people standing close to or near Officer Nichols or Officer Griffith?

A. I saw no group of people collected other than ourselves whom they had stopped.

Q. You were the only group collected in the entire station? Is that right?

[fol. 190] A. Well, the only group that was collected as a group. Some 20 or so folks were there looking at this situation of clergymen being arrested.

Q. Were some of the people playing the pinball machine during this time?

Mr. Watkins: Object to leading.

Q. Did you observe the conduct of some of the people in the station while you were held under arrest by the two officers?

The Court: I overrule the objection.

Q. Oh. I withdraw that question and ask if you observed anybody playing the pinball machine.

A. No.

Q. Could you see what people were engaging in their normal course of business?

A. I think they were a little flabbergasted about this situation, as we were, but I didn't see anybody playing pinball. I can't say specifically what any number of persons were doing except I saw nothing of a threatening nature anywhere.



Q. And you didn't threaten anybody?

[fol. 191] A. No.

Q. Did you observe Chief Ray enter the station?

A. I can't say I saw him walk in the door. I saw him coming toward us. I don't know that I saw him go through the door.

Q. What happened as he came to you?

A. He came to the group and said he'd get us on our bus. He wanted us to move on, and we had the same kind of conversation we had had with Officers Nichols and Griffith and indicated we would be glad to get on our bus but we were hungry and wanted to have a bite to eat beforehand, and again this exchange was repeated awhile, and we said we were interstate travelers; we had our tickets; we showed them to him; we asked what we had done wrong; and it was the same thing more or less repeated again, and finally he said, "You're under arrest. Come with me."

Q. Did Chief Ray ever tell you what you had done that was wrong?

A. Not that I heard.

Q. You were standing fairly close?

A. Oh, yes.

Q. Did you hear it? Did you hear him say that?

A. No.

[fol. 192] Q. While Chief Ray was speaking, did any of the other passengers in the station indicate that any hostile feelings—or say anything hostile to you / and your associates?

A. Such was not evidenced by sound or sight.

Q. When Chief Ray came in, then, of course, he was Captain Ray, did he speak to either Officer Nichols or Officer Griffith?

A. I think he walked immediately into our circle there and spoke to us immediately. I observed him speaking to no one else.

Q. Did they speak to him, say anything to him?

A. I don't know. He was talking to us right away so I doubt there was—

Q. Did you see him?

A. There was no conference between the two. I'm sure there couldn't have been a conference between the two. I was right there. One of them had gone— This is speculation.

Q. Then don't speculate, please. Just what you saw and heard, nothing more: Did you see either of the officers speak to Chief Ray?

A. No, sir.

Q. And you were facing them? Is that correct?

A. Yes.

[fol. 193] Q. Did you see the officers or hear the officers and Chief Ray ask anybody else in the station to leave the station?

A. No.

Q. This was from the first moment of your arrest until you were taken from the station, is that right?

A. Right.

Q. After Chief Ray said these things you have described, what happened thereafter?

A. He said to come with him, and we followed him out the back door whence he had come. That was over toward the left as you go out the back door, to the bus loading ramp area that was then vacant, and he said, "Wait here," and we did for some five minutes, perhaps, until the police wagon came and we were put in it and taken to jail.

Q. All five of you go into the wagon?

A. Yes.

Q. The paddy wagon?

A. It was a bit crowded, but we were all in there.

Q. What happened when you got—. What jail were you taken to?

A. Jackson City Jail.

Q. What happened when you were taken to the jail?

A. We were taken upstairs into the conference room and in sequence were processed.

[fol. 194] Q. Describe the processing.

A. We were interrogated by police personnel. We were fingerprinted, and we were photographed. We were required to leave our wallets and watches and such personal effects with them, and then we were forthwith taken to the cell block.

Q. By the way, have you ever gotten those fingerprints back?

A. No.

Q. What day of the week was this, if you recall?

A. September 13th, it was a Wednesday.

Q. What day of the week was it?

A. Wednesday.

Q. What day was it that you had your trial in Judge Spencer's court?

A. Friday, I believe.

Q. Two days later?

A. Yes.

Q. Were you in jail all that time?

A. Yes.

Q. Do you know, by the way, whether bail was set at this point?

A. I know of no mention of bail until our trial in Judge Spencer's court.

[fol. 195] Q. Were you present at the trial before Judge Spencer when he presided?

A. I was.

Q. Do you recall what his verdict was?

A. Guilty.

Q. Did he pass sentence upon you?

A. Yes.

Q. What was that sentence?

A. Four months and two hundred dollars. I think it was two hundred dollars.

Q. What happened immediately after he passed sentence?

A. We were taken back up to the cell and put back in.

Q. Did there come a time when you eventually left the jail?

A. Yes.

Q. How long after?

A. I and several others of the plaintiffs were released upon appeal bond a week from when we were jailed. I think it was Tuesday following.

Q. Tuesday?

A. The following Tuesday.

Q. You had by that time received the appeal money?

A. Sufficient cash funds had come spontaneously, mostly from Episcopalians around the country, but others, too, [fol. 196] and had been sent directly to Jackson, mostly to our attorney, Jack Young, and sufficient funds were in hand by Tuesday for thirteen of the fifteen of us to be released on appeal bond.

Q. And you left, I take it?

A. That is correct.

Q. Who remained?

A. Fathers Jones and Taylor remained.

Q. You heard his testimony this morning about his leaving some time later?

A. I did.

Q. Does that jibe with your recollection?

A. Yes.

Q. Do you recall where you were going when you entered the bus station on the 13th?

A. We had tickets for Chattanooga.

Q. Had you business in Chattanooga?

A. We were going from Chattanooga out for about an hour's drive to three institutions our church operates—a university and two prep schools.

Q. Then eventually you would end up where?

A. At the general convention of the Episcopal Church meeting in Detroit, Michigan.

[fol. 197] Q. How often is that convention held?

A. It meets every three years.

Q. What was the date the convention was due to start?

A. September 17th, 1961.

Q. It was your intention, I take it, to be there prior to the opening of the convention?



A. We had planned to unveil a large placard in the lobby of the convention hall that in symbolic terms said something of our concern toward segregation and the church, and would have delivered then, also, a message about the same concern, and that would have been Sunday afternoon of the 17th.

Q. Did you get there Sunday afternoon, the 17th?

A. I did not.

Q. Where were you at that time?

A. In jail.

Q. You spent approximately one week in jail, is that right?

A. Yes.

Q. How many trips have you made back to Jackson for these necessary purposes in connection with your appeal from Atlanta?

A. A trip in October 1961.

Q. A total of how many?

[fol. 198] A. Three.

Q. And these trips were from Atlanta?

A. Yes.

Q. Roughly what is the expense of each trip?

A. I estimate the total expense of air travel and miscellaneous things at around eighty dollars.

Q. For the three trips?

A. For each trip, round trip. Actually about ninety dollars when you get food and all.

Q. I take it that does not include the expenses of the trip coming here today?

A. No.

Q. Nor does it include expenses of the depositions we took in Mr. Watkins' office?

A. No.

Q. So, whatever expense there is that is additional, is that correct?

A. Yes.

Q. Have you had any other expenses in addition to what you just described?

A. Well, there was a lawyer's fee in the fall of '61.

Q. Who is that to, Attorney Jack Young?

A. Yes.

[fol. 199] Q. What was the amount of that, if you recall?

A. I think it was three hundred dollars. I will have to check my figures. This was for work and representation in our behalf right on through trial in Judge Moore's court, and it covered, of course, the firm of Young & Hall. Your question is still of other expenses?

Q. Yes, if you have any. If that is all, say so.

A. I have to get some notes to recollect this in detail.

Q. Did you have any necessary telephone calls, long distance phone calls, to make?

A. There were a tremendous number of calls and arrangements for each of these trips and the scheduling of some of the activity connected with appeal was also so indefinite and sometimes changed in the trial, the fact that we had to be on long distance to communicate with one another pursuant to coming.

Q. About how many telephone calls would you estimate were made in regard to your appeal?

A. This would be relative to all fifteen?

Q. No, just for the four plaintiffs in this case.

A. I would estimate I had to call each person around twice in connection with each trip, at least.

Q. Was there anything else, any other expenses that you [fol. 200] had? Does that about cover it?

A. That is all I recall at the moment.

Q. From the time that you were released from jail here in Jackson, have you to your own knowledge received any communications which have cast aspersions on your character?

Mr. Watkins: We object to that unless the source of the communications were disclosed and such that they would be competent in evidence and not violate the hearsay rule.

Mr. Rachlin: First I have to ask whether he did.

The Court: Overrule the objection to that.

Q. Have you received to your knowledge any communications, either in writing or in person, which have cast aspersions on your character as a result of your stay in jail?

A. Numerous communications, or personal references, or comments spoken in my presence that would be in the affirmative to your question.

Q. Approximately how many did you receive? Could you give us some figure roughly?

A. Several dozen.

Q. Did these communications make direct reference to [fol. 201] your stay in the jail in Jackson?

A. To the stay in jail, yes. They were mostly directed toward this, to the imprisonment here and the conviction. Some people didn't like our going to a school or somewhere else, but mainly it centered on reactions to being incarcerated here.

Q. Can you tell us the nature of some of these disparaging remarks that were made to you?

Mr. Watkins: We object to that.

The Court: Sustain the objection.

Mr. Rachlin: I have no further questions.

Cross examination.

By Mr. Watkins:

Q. Reverend Morris, will you please tell us what ESCRU is?

A. Episcopal Society for Cultural Racial Unity, and is an organization of clergy and laity within the Episcopal Church. In common parlance, concerned with desegregation in the church, primarily, and for the church's leadership within the community in moving toward a desegregated society, but in theological terminology, which is our primary frame of reference, be obedient to our Lord and Savior, Jesus Christ, whom we believe compels this commitment. [fol. 202]

Q. Is it an organization that strives for desegregation of our churches in the North and South first?

A. Our primary concern. We don't think we can settle all problems within the church before we are concerned with problems everywhere.

Q. You do have segregated churches in the North, as well as the South?

A. We have no segregated churches anywhere.

Mr. Rachlin: Your Honor, I realize that this morning I took a lot of time and since Your Honor has chosen to rule on some of these same questions that were asked this morning, I wonder if Your Honor would give me a liberty of having a standing objection to this line of questioning?

The Court: Yes.

Mr. Rachlin: I will only object if there are special additional reasons.

The Court: You may object any time you feel like it. If you feel like the standing objection I am giving to you does not cover some questions, then you can add additional objections. I will give you a standing objection to questions of this type concerning that nature or matter, and the objection is overruled and you do not waive it by your failure to renew it at various times.

Q. Did I understand you to say to me your church did not have segregated facilities in the North as well as in the South?

A. We have no segregated churches anywhere, to my knowledge. If you want me to explain this, I will be glad to.

Q. Well, I want you to explain to me, if you will. You are familiar with this pamphlet, Defendants' Exhibit No. 1?

A. I am not sure. I would have to see that.

Q. Well, you have seen it a number of times. Take another look at it.

A. This is what I saw in the depositions. It had one error from what—it wasn't a significant error—so in the main it is correct. This is the message that we prepared in



New Orleans when we gathered that evening September the 11th to our convention in Detroit. This is substantially that.

Q. Now I want to direct your attention to this language in this message: "Our separate but equal parish systems as it exists in the North, as well as in the South, is partly a result of the housing pattern and also a contributor to it." What do you mean by separate but equal in the North and [fol. 204] South?

A. This is in pursuance to the question about segregated churches?

Q. Yes.

A. We have no segregated churches that are by ruling or law within the church segregated. And we have very few where anyone would be turned away because of race, although they might not be cordially welcomed. We rather have the more insidious problem of separation where the customs of segregation in the community have infected the church and caused it to oftentimes follow these same patterns in practice but not by law, not by church law. So that it amounts to what would be called a separate but equal parish system, although it is no system in any official sense. The Episcopal Church is against segregation in all official commitments.

Q. You refer to it as insidious because in some communities on a voluntary basis the white people prefer to go to one church and the Colored people prefer to go to a separate church; is that what you mean?

Mr. Rachlin: That question I object to because I think it is argumentative and has nothing to do with the case.

The Court: Overrule your objection. I think it calls for a fact.

[fol. 205] Q. Is that what you refer to as the insidious statement?

A. Repeat.

Q. Did your reference to an insidious custom refer to the fact that in some communities, such as Jackson, Missis-

issippi, for one, where you have Episcopal Churches, one serving White people and another serving the Colored people purely on a voluntary basis, is that what you had reference to?

Mr. Rachlin: Doesn't it call for a conclusion on the part of the witness that nobody is qualified to answer?

The Court: No, I will overrule the objection because I think the question is to what he meant by the "insidious custom." If that is what he means, he can so state.

A. I mean I do in fact believe this is contrary to the will and mind of Jesus Christ and it is very prevalent in the North, as well as in the South. That is what the statement here has reference to.

Q. And the practice of people voluntarily of one race going to one church and another going to another church is the insidious custom you are talking about?

A. People are free to be sinful, but it doesn't mean I approve of it just because it is the norm of the majority of consensus.

[fol. 206] Q. You consider it insidious and sinful for White people to go to church together and Colored people to go to another church together?

A. I think this crucifies Christ every time it happens.

Q. You are the director of ESCRU?

A. Executive director.

Q. And as such you organized the so-called pilgrimage, did you not?

A. I was the chief administrator in planning it. I wasn't the only one involved in this role of organizing.

Q. Did you not handle the correspondence with the various candidates who either asked to be permitted to make the pilgrimage or whom you asked to make the pilgrimage?

A. They asked to be permitted to go and I handled the correspondence.

Q. And you have official possession of that correspondence, do you not?

A. I do.

Q. Do you have it with you?

A. My attorney has correspondence with him.

Q. May I see the correspondence incident to the applications of the individuals you permitted to go on this pilgrimage, and your answers as director of ESCRU?

[fol. 207] Mr. Rachlin: I have it with me, but I have no intention of turning it over to Mr. Watkins unless Your Honor rules on this question. I don't think he has any right to see this correspondence. It doesn't relate to the question we are trying here.

The Court: I will let him answer the question first.

Mr. Rachlin: He has indicated he has turned it over to me.

The Court: The next question was he willing for me to turn it over to Mr. Watkins.

Q. Are you willing for me to see that correspondence?

A. Not particularly, because I don't think it's any of your business.

Mr. Watkins: Then I will call on the Court to ask the plaintiff to produce the correspondence which I think is material for the purposes of the trip.

The Court: Let the Court examine it and I will determine after I examine it whether it should be turned over to you.

Mr. Rachlin: I am perfectly happy to obey the Court's instructions. I am going to turn it over to you this second. Just give me a moment to find it.

The Court: Oh, yes.

[fol. 208] (The same was handed to the Court)

The Court: It is going to take about ten minutes to look at this, so I will take a recess for ten minutes.

(Whereupon the Court recessed for ten minutes)

The Court: Counsel for the plaintiff handed to the Court a group of documents called for by counsel for the defendant to be seen by counsel for the defendant, and the Court took them into chambers and read all of them over, part

of which have no relevancy to the issues in this case, and part of which do. I am returning to counsel for the plaintiff those that have no relevancy or bearing, either upon the ground that they are documents that were written after the arrest of the defendants here in the City of Jackson, or such few of them as dated prior to that having no relevancy to the issues. So as to those, I will return those to counsel for the plaintiff. There are certain ones, beginning with the date of June 16, I believe, and coming on up as late as possibly September the 9th, I think that do have a bearing upon the issues in the case, and counsel for the defendant will be permitted to examine these. So, Mr. Rachlin, I will give you this back, and now some of these are dated and one or two of them are not dated, and I guess the best [fol. 209] way to keep the record straight would be for the Court to dictate to the court reporter by dates or other designated matter showing the document that is given to counsel for the defendant to see, and then the record will be clear as to the documents that are given to counsel for the defendant.

A letter dated June 16, 1961; addressed to Clerical Members, and headed Pilgrimage From New Orleans to General Convention, and signed by Reverend John B. Morris.

Mr. Watkins: May we have those marked for identification?

The Court: There are quite a number of them.

Mr. Watkins: We will mark them later.

The Court: I don't know what your procedure will be, of course, but I imagine when you read them you will want to cross examine about certain statements therein, as, of course, a lot of the document is immaterial one way or the other. So I believe I will cover it this way and have them later marked for identification.

The first one is June 16th, designated "Re: Prior Pilgrimage from New Orleans to General Convention."

The next document accompanies one of the letters—I do [fol. 210] not recall which one. It is possible it was the one



of June the 16th. But it is designated "To Applicants for the Prayer Pilgrimage," and consists of one sheet.

The next one is a letter dated June 30, 1961, addressed to Clerical Members and signed by Reverend John B. Morris. The next one is dated July —, 1961, and is addressed to the Clergy, and consists of two sheets attached together and signed by Reverend John B. Morris. The second sheet thereof is dated June 16, 1961, and is addressed to Clerical Members.

The next one is dated August 4, 1961, addressed to Pilgrimage Applicants, and is signed by Reverend John B. Morris and consists of four sheets, all of which is attached together as a part of the same document.

The next one is August 19, 1961, addressed to Pilgrimage Applicants, and signed by Reverend John B. Morris and consists of four sheets all attached together.

The next one is August 26, 1961, addressed to Pilgrimage Applicants, and is signed by Reverend John B. Morris and consists of one sheet.

The next one is September 2, 1961, addressed to Pilgrimage Participants, and is signed by Reverend John B. [fol. 211] Morris, and it consists of one sheet.

The next one is dated September 5, 1961, and is addressed to Pilgrimage Participants, and is signed by John B. Morris.

The next one is September 7, 1961, addressed to the Clergy of Jackson and Birmingham, and is signed by John B. Morris.

The last document there appears the figures 9/18/61, and is one sheet headed "Statement by Reverend D. Powell Woodward for Fifteen Episcopal Ministers."

Counsel for defendant is entitled to examine these, in my opinion, and I will let him have them.

Mr. Watkins: May I have permission to examine these and reserve my cross examination on them until tomorrow?

The Court: Yes, I was going to ask you if you could continue with the other part of your examination and then,

rather than to take the time out to read them now and examine them, to continue your cross examination later.

Mr. Watkins: If counsel for the plaintiffs have any objection to my retaining these overnight I will ask the Clerk's Office at my expense to photostat them now.

[fol. 212] Mr. Rachlin: No objection.

Mr. Watkins: No objection to my keeping them?

The Court: And they will either be returned to counsel for plaintiff when you shall have finished with them, unless any of them shall be admitted into evidence.

Mr. Rachlin: I would like Mr. Watkins' assurance that he will not make photocopies or other copies of these documents.

The Court: I will permit that, Mr. Watkins. You will not make any photographic copies of them unless after you shall have examined them you deem that you are entitled to have photostatic copies made and apply to the Court for that, and I will rule upon it at that time. But do not make any copies. Do not make any copies of them in any manner whatsoever, without first applying to the Court.

Mr. Watkins: There is no objection to my making pencil notations of some of the language in order to cross examine the witness as to them?

The Court: No, that will be all right, you can do that. Make any notations on the documents you desire.

Mr. Rachlin: I, of course, reserve my right at that time [fol. 213] to object to any particular question as to the documents.

The Court: Oh, yes.

Cross examination (continued).

By Mr. Watkins:

Q. Reverend Morris, who was the first person who suggested this pilgrimage?

Mr. Rachlin: Objection as incompetent and irrelevant unless it is one of the plaintiffs in this case.

Mr. Watkins: That is what I am trying to find out.

The Court: Overrule the objection. You may answer the question.

A. There was no one person who suggested the pilgrimage as it finally became settled, the itinerary, the format that it encompassed. I was probably the first to raise some question of some kind of pilgrimage like this, but it was in conversation with a great many people, the format as it was developed.

Q. The first discussion of this proposed pilgrimage, did it arise in Richmond, Virginia, during the month of June 1961?

A. Yes, I was in Richmond when I first discussed it with a group of people.

[fol. 214] Q. And at that time the Freedom Ride invasion of Jackson, Mississippi, was in full bloom, was it not?

Mr. Rachlin: I object to the question and to the form of the question.

The Court: In view of the contents of the documents that I have read, I will overrule the objection because I think it competent, or will become competent during the progress of this trial.

A. I don't know of an invasion of Jackson since the Civil War, sir.

Q. Let me ask you if I didn't ask you that precise question on your deposition, and I will read you the question I asked:

"Question: And at that time the Freedom Rides in Jackson were in full bloom?"

"Answer: I cannot remember clearly, but most likely it was."

Was that your answer?

A. Yes, I am sure it was.

Q. Did you follow that in the press, the Freedom Ride invasion?

A. The Freedom Ride movement I did follow in the press.

Q. Started in April and lasted through September, didn't it?

A. No.

Q. Well, now, I will ask you if I didn't ask you that precise question on your deposition and if your answer [fol. 215] wasn't this: "I guess we were some of the last arrested on those same charges. So, then, we were arrested in September. I am not sure when it started. We had been over that here earlier, you mentioned Alabama."

A. What was the last of that?

Q. "We had been over that earlier, though. You mentioned Alabama."

Mr. Rachlin: I can't see how anybody in the context of this, taken in the midst of thirty or forty other pages, and it obviously refers to other questions and other things asked, and I ask that it be framed some other way.

The Court: He read the question to the witness. I think it's a competent question. When you take him on redirect examination you, of course, if there is anything you desire to clarify by some of the other testimony, you have that privilege.

Mr. Rachlin: I object to the question and object to the answer being read.

The Court: Overrule the objection.

A. I said we had been over that before. I was repeatedly having to respond to your efforts to describe our pilgrimage as a Freedom Ride per se, exclusively, without all of the [fol. 216] ramifications that were set forth in our depositions that involved religious convictions on our journey. I acknowledged in my answer in the deposition that we were arrested in September and you asked were we part of this thing that went on from April to September. I don't concede your point that we were a Freedom Ride.



Q. Reverend, my question to you originally here today was, it started in April and lasted through September, didn't it? You gave me a negative answer here today. Now, I called your attention to the fact when you were asked that in February your answer was, "I guess we were some of the last arrested on these same charges." Now, explain to me and the jury the difference in the two answers.

Mr. Rachlin: It is clear from the context of that question and the answer that was read that the answer was not responsive to the question that Mr. Watkins asked. Now, the question he asked was referring to the Freedom Ride started in April and lasted through September. Mr. Morris's answer was not responsive. He said, "I guess we were some of the last arrested on these charges," not referring to the other part of the question that Mr. Watkins [fol. 217] is trying to tie into this, and I submit the answer and the question are both improper and ought to be excluded, and if Mr. Watkins wants to ask the question again then I will raise whatever objection I have at that time. But it is clear and we can't take this out of the context.

The Court: I will overrule the objection and let him say whether that was his answer or not. If it wasn't, then of course, it could be used for impeachment purposes. If it was his answer, then it is competent. So I will overrule the objection.

Q. Was the answer I have just read to you from your deposition the answer you gave to that question on your deposition?

A. I examined my deposition and it seems to be correct. I haven't looked at it there, so I would have to.

Q. I am referring to Page 7, the last complete question and answer. "It started in April and lasted through September."

"Answer: I guess we were some of the last arrested on those same charges."

Was that your answer?

A. In my deposition, yes.

Q. Do you make that same answer here today?

A. I will say we were the last arrested similar to the [fol. 218] charges on which Freedom Riders were arrested.

Q. You and I have no quarrel.

A. But I do not concede that we were Freedom Riders. I will be glad to go into this more.

Q. I realize you are not willing to state openly that you are Freedom Riders.

Mr. Rachlin: That is an offensive remark and ought to be stricken.

The Court: I will strike that and, Gentlemen, you disregard the remark of Mr. Watkins.

Q. You did approve of the activities and the purposes of the Freedom Riders?

Mr. Rachlin: Objection, not relevant to this proceeding. This is a case we are trying for false imprisonment and whether the defendants properly or falsely imprisoned these people. We are not concerned with the views of Mr. Morris or anybody else in the United States. I repeat myself, this is not getting across to the Court. We are trying the wrong case.

The Court: Overrule the objection. I think it competent to the issues in this case. You may answer.

[fol. 219] Q. My question was, did you personally approve of the activities and purposes of the Freedom Riders?

A. Generally, I personally approved.

Q. Reverend Morris, your group met at Tougaloo the night of September 12, 1961, didn't it?

A. Yes.

Q. At that time you had a meeting, at which time your plans for the next day were discussed, did you not?

Mr. Rachlin: Objection.

The Court: Overrule the objection.

A. Yes.

Q. How many of your group was present at Tougaloo that night?

A. I think that all twenty-eight of our number were present then.

Q. That night you agreed that the next day you would divide yourselves into two groups, didn't you?

A. Yes.

Q. One group was to go directly to Chattanooga, Tennessee, and the other group was to go to Jackson, Mississippi, is that right?

A. Yes, right. I was in the group that went to Chattanooga.

Q. You hesitated.

[fol. 220] A. No, that is correct. You are correct, I was in the group that was due to go to Chattanooga.

Q. Where was the other group going?

A. They were coming into the City of Jackson to call on religious leaders, clerical and lay.

Q. When your group that went to the Trailways Bus Station went there as a group, the fifteen of you were dressed in clerical garb, weren't you?

A. That is correct.

Q. You had two other members of your group there in what I, without reflection, will describe as plain clothes, without disclosing your clerical garb, didn't you?

A. They were dressed informally, yes. They were not wearing clerical clothes such as I am now.

Q. Two members of your group went down there not dressed as preachers, didn't they?

A. That is right.

Q. They were Reverend Boyd and Reverend Zimmer, weren't they?

A. They were Reverend Boyd and Reverend Zimmer, yes.

Q. They went there for the purpose of being observers of what took place when you all were there, didn't they?

Mr. Rachlin: I'm going to object to the question. First, [fol. 221] that calls for a conclusion on the part of this witness; and second, it is irrelevant, incompetent and immaterial.

The Court: Overrule the objection.

Q. What was the purpose of Reverend Boyd and Zimmer going to the station dressed as laymen rather than in clerical garb as clergymen?

A. They came to see us off. They came to see us off and be assured that we went on our way safely. In this sense, then, to observe is to perceive, to know information, to know whether we went on our way. Yes, they were observing.

Q. Why did they go in lay clothes and not in clerical garb?

A. They were not a part of our group going to Chattanooga. They were a part of the group going into Jackson to call on religious leaders here.

Q. Did the group that stayed in Jackson to call on leaders all take off their clerical garb?

Mr. Rachlin: I don't see the relevancy. How does he know what was in the mind or what the people who remained in Jackson did when he was someplace else?

The Court: Overrule the objection. I am not commenting on why I overrule the objection other than to say I think it is admissible.

Q. Were those the only two that took off the clerical garb, or did the other thirteen?

A. Might have taken them off, I don't know. I think if they were calling on clergy they probably would have dressed more formally.

Q. Why did the two who went to the Trailways to observe take off their clerical garb?

A. You would have to ask them.

Q. You don't know?

A. No.



Q. You have Reverend Zimmer here as a witness?

A. We will.

Q. He undoubtedly can answer that question for me?

A. Yes.

Mr. Rachlin: May I ask why we go all through this when Mr. Watkins knows Mr. Zimmer is here?

Mr. Watkins: I think I am entitled to find out if this witness knows.

The Court: That is right. This witness answered the question and he didn't know and that ends it.

[fol. 223] Q. In the Tri-State Bus Station on not one but on numerous occasions you and the other members of your group refused to obey the orders of the Jackson Police to disperse and move on?

A. One occasion. Several requests within that one occasion.

Q. Several requests over a period of some fifteen minutes?

A. Well, perhaps less time than that.

Q. You fix the time.

A. Ten minutes.

Q. Several requests were made by Jackson Police to you and your group to move on over a period of approximately ten minutes and you refused to do so, didn't you?

A. Exactly.

Q. Now, Reverend, after being convicted in the Municipal Court and after appealing your case to the County Court, you learned that the County Judge was considering dismissing the cases against you ministers, didn't you?

Mr. Rachlin: I object to that question. What possible reference can that have here?

Mr. Watkins: I want to show that—

The Court: I see. I will overrule the objection. I think it is competent.

A. I was advised by telephone on a day in early April [fol. 224] that that morning the Judge had dismissed

charges against us out of respect for the Episcopal Church and certain reasons that seemed rather unusual for a Judge.

Q. And you took strong exception to that action on the part of the County Judge? You thought that was a terrible thing, didn't you?

A. I was very pleased, personally, because it meant I wouldn't have to go through with all this trial and all. I was disturbed for the sake of the integrity of the judge and also for the sake of the integrity of the church. It seemed like the church had to be treated in a special way. That was the only thing I was disturbed about, although, personally I was glad, secretly, in one sense. I couldn't ask for special treatment for the Episcopal Church and I really couldn't accept it; I had to object to it, but I had no, you know, personal grievance about it.

Q. Didn't you say in your deposition that for the charges to be dismissed against the ministers and not against the Freedom Riders would be a terrible thing?

A. Well, I think so, yes.

Q. In other words, you were insisting that your group be treated just like all the other Freedom Riders?

A. Well, we never denied that the facts surrounding our [fol. 225] arrest, as we were dealing with a moment ago, were similar.

Q. You wanted your group to be treated just like the other Freedom Riders?

A. I wanted justice to be accorded everyone who was arrested on the same charge under the same kind of situation.

Q. You did not want dismissal of the charges against your group if there wasn't to be against all the Freedom Riders?

A. No. Our visit back to Judge Moore's Court did not in any wise say, "Take this special treatment back." We could not presume to hand back the dismissal. Rather, we came back out of a concern over the others who were not being treated this way.

Q. And you did not want to be dismissed unless the others were?

A. That never came up. Our point simply was to emphasize the fact that the others had not been dismissed—why not?

Q. I want to ask you if on February the 15th in your deposition you were asked this question:

“Question: You said that if he dismissed them out of respect for the clergy that would have been a terrible thing?”

And your answer was, “It would have been.”

A. That is right.

[fol. 226] Q. Reverend, you live in Atlanta, Georgia, I believe?

A. That is correct.

Q. Do your children go to a public or a private school?

A. They go to a church school.

Q. That is a private school?

A. Private church school.

Q. Is it a segregated school?

A. Unfortunately, I have to say very probably it is.

Q. Don't you know?

A. I will tell you, if you want, that recently they rejected a Negro applicant. I am hoping they are going to accept some others that are now in process. It is not a definite policy. The school will not say they have a definite policy yet.

Q. Did you testify in the Municipal Court?

A. No.

Q. Did you testify in the County Court?

A. No.

Q. Did Reverend Jones testify in the Municipal Court?

A. No.

Q. Did he testify in the County Court?

A. Yes.

Q. Did any of the plaintiffs testify in County Court? I think you are mistaken is the reason I am repeating the [fol. 227] question.

A. Jones was the case that was brought up first in County Court. It was upon his case the acquittal came.

Q. My question was did he take the witness stand.

A. I thought he did, but if I am in error—

Q. I think you are in error. You are not sure?

A. I know it wasn't anyone else.

Q. Did any one of your four plaintiffs suing here today testify in the Municipal Court?

A. I will say I don't know.

Q. You didn't?

A. No.

Q. Did any of you four suing here today testify when the case was retried in County Court?

A. I don't know.

Q. You didn't?

A. Right.

Q. And you know of none that did?

A. I don't know.

Q. Did police officers testify? Different police officers did testify in the two Courts, didn't they?

A. Yes, it was Captain Ray in City Court and one of the two police officers here next to the captain over there in [fol. 228] the County Court.

Q. Who were your attorneys in the Municipal Court?

A. Mr. Young and Mr. Rachlin.

Q. You have told us in your direct what Mr. Young's fee was and who paid it, is that correct?

A. I beg your pardon?

Q. You have told us what Mr. Young's fee was and who paid it?

A. I said I thought it was three hundred dollars. I am not certain.

Q. And that ESCRU paid it?

A. And that it went to the firm of Hall & Young, because Mr. Hall was in our case in the County Court and so they were both—

Q. My question is who paid it.



A. The prior Pilgrimage Appeal Fund paid it.

Q. Who paid Mr. Rachlin's fee in the Municipal Court and the County Court?

Mr. Rachlin: Objection. Who paid a fee or whatever else, how is that relevant to this case?

The Court: Yes, I sustain the objection.

Mr. Watkins: I am certainly abiding by Your Honor's decision, but let me state my purpose in asking this question. It is my theory that one or more organizations financed this entire trip and that included the expenses of [fol. 229] the trip as well as the attorney's fees arising out of the expedition. Now, I do not press my right to ask the question, I merely wanted to make it clear why I asked the question.

The Court: I adhere to my ruling and sustain the objection.

Q. You knew at the time of your trial in Municipal Court, and you now know, that Mr. Rachlin is general counsel for the Congress of Racial Equality or CORE?

Mr. Rachlin: Your Honor, is a client accountable for the attorney's activities just as the City of Jackson and all Mr. Watkins' corporate clients are not accountable for his acts here today?

The Court: Well, it depends upon the circumstances of each particular case, so I will overrule the objection. I think that is competent.

A. I know that Mr. Rachlin is a member of a New York firm and that he has some relationship to the legal staff of CORE. I don't believe he keeps his office there. I have been in his office, which is in the firm's office.

Q. You don't know that he is general counsel for CORE?

A. I didn't know his title. I knew he was chief legal advisor for CORE. If it is general counsel, I am glad to know now.

Q. Did you meet with Tom Gather while you were in Jackson?

A. He came to the jail to see us—or was it after the jail?

Mr. Rachlin: Objection.

The Court: Overruled.

Q. Do you know Tom Gather's connection with the Congress of Racial Equality, or CORE, in Mississippi?

A. I knew at the time when I met him here he was associated with CORE.

Q. In what respect?

A. I don't know.

Q. You didn't know he was field secretary for CORE in Mississippi?

A. I knew that he had this job. I don't know what the title was. I had not met him until I was in the jail.

Q. With reference to your expenses to Jackson that you testified about on direct examination, who paid those or reimbursed you, if anybody, for them?

A. The Episcopal Society for Cultural and Racial Unity.

Q. That is what I refer to as ESCRU?

A. Yes.

Q. Reverend Morris, at the time of your visit to Jackson, [fol. 231] were there conditions which you would describe as racial discrimination existing in our own community?

A. Oh, yes.

Mr. Rachlin: Objection. I wasn't aware the City of Atlanta was on trial in this case. I was aware the defendants are on trial as to whether they committed a false imprisonment.

The Court: Sustain the objection on that question.

Q. Didn't you as an Episcopal minister living in Atlanta, Georgia, feel that your time could be better spent on problems of that kind at home rather than in Jackson, Mississippi?

Mr. Rachlin: Objection.

The Court: Sustain the objection.

Q. I note on the papers filed in this case that one of your original attorneys in this case was William Higgs, is that right?

A. You want me to answer? My answer is yes.

Q. Is he now one of your attorneys in this case?

Mr. Rachlin: I am going to object to that question.

The Court: I sustain the objection.

Mr. Watkins: Subject to my right to cross examine this [fol. 232] witness about the documents that have been made available to us, I have no further cross examination. Wait just a minute.

Further cross examination.

By Mr. Watkins:

Q. In making your trip to Jackson, Reverend Morris, you were apprehensive of either violence or being jailed, or both, weren't you?

A. We didn't know what you all might do here, so we were apprehensive. But we weren't making a trip to Jackson—we were making a trip to Detroit. We were going through Jackson, as well as many other cities en route.

Q. You knew your trip was being widely publicized by radio, television, newspaper and otherwise?

A. It was not widely publicized until it started.

Q. I mean after it started it was widely publicized?

A. We didn't know how widely, but we saw some publicity about it after it had started.

Q. And you anticipated there would be a tense situation in Jackson when you arrived here, didn't you?

Mr. Rachlin: Object to the question.

The Court: Overrule the objection.

A. We were an integrated group of clergy and we knew [fol. 233] we were going to certain regions of the country where this might cause someone not liking such a group, but not just Jackson.

Q. Well, when I refer to Jackson I am referring to your trip in the South generally. You anticipated a tense situation among the people in the Southern communities in which you were going?

A. Just the prospect of some White people not liking us, while most Negroes would be glad to see persons together on a harmonious and happy and integrated basis, while some Whites would not object to it, either. I mean some White citizens we knew might be upset over being an integrated group of clergy.

Q. You knew you were on a trip involving a matter that was highly controversial among the people of a town such as Jackson, Mississippi?

A. Because we were integrated we knew this was controversial.

Q. In coming to Jackson, didn't you actually want to be jailed and hoped that you would be jailed?

A. No.

Mr. Rachlin: Your Honor—

Mr. Watkins: He has answered no.

The Court: I would have overruled it because in view [fol. 234] of what I have read I think it is a competent question.

Mr. Watkins: Those are all of the questions I have subject to our right to put him back on cross examination.

Mr. Rachlin: Because I was conferring I don't know what the answer was.

The Court: Do you want to redirect or would you prefer to wait until cross examination is completed?

Mr. Rachlin: I have a few things that, with Mr. Watkins' permission, I was neglectful of one or two things that I should have put on on direct.

The Court: Very well, you may examine him further.

Redirect examination.

By Mr. Rachlin:

Q. I forgot to ask you were you present in County Court on the appeal trial of Father Jones, who testified this morning?

A. Yes.



Q. Were you present when Judge Russell Moore rendered his verdict in open Court?

A. Yes.

Q. Then were you present when City Attorney Jack Travis got up and stated that the evidence in all the other [fol. 235] cases was the same as in Father Jones' case and he moved to nolle prosequi all the other cases?

A. Yes.

#### OFFER IN EVIDENCE

Mr. Rachlin: With that in mind, I would like to offer this authenticated record of the entire appeal from the initial stages in Judge Spencer's Court through the nolle prosequi in Judge Moore's Court, authenticated by Deputy Clerk Robert E. Lilly of the Circuit Court and the County Court of Hinds County.

Mr. Watkins: No objection.

The Court: Let it be received in evidence and marked by the court reporter.

(Same was received in evidence and marked as Plaintiff's Exhibit No. 2; which exhibit follows here below:)

#### EXHIBIT PLAINTIFF #2

MAY 14 1963

STATE OF MISSISSIPPI  
COUNTY OF HINDS

I, H. T. Ashford, Jr., Clerk of the Circuit and County Courts, and custodian of the said records in and for the said State and County, hereby certify that the foregoing 8 pages contain a true and correct copy of all the pleas and proceedings had and done in the case of State of Mississippi vs John Burnett Morris in the County Court of the First Judicial District of said County in said State, and being case No. 12935.

Given under my hand and the seal of the County Court of said County and State this the 8 day of May, 1963.

H. T. Ashford, Jr. Circuit and County Courts, Hinds County, Mississippi; Robert E. Lilley, D.C.

(SEAL)

No. 12, 935

(Filed Oct. 2, 1961)

October 2, 1961

County Court Clerk  
Hinds County Courthouse  
Jackson, Mississippi

Dear Sir:

Section 1205 of the Mississippi Code of 1942 provides that "The Justice of the Peace, or Mayor, or Police Court from whose judgment convicting of a criminal offense an appeal shall be taken, shall at once transmit to the Clerk of the Circuit Court the bond taken by him and a certified copy of his record in the case, with all the original papers in the case, as in appeals in civil cases."

In accordance therewith, I am enclosing herewith a certified copy of my record in the case of State of Mississippi versus John Burnett Morris, with all the original papers in the case to be dealt with according to law.

With very best regards, I remain,

Very sincerely yours,

/s/ James L. Spencer, Police Justice and Ex Officio,  
Justice of the Peace, City of Jackson, Hinds  
County, Mississippi.

JLS:sgw

## IN THE POLICE COURT OF THE CITY OF JACKSON, MISSISSIPPI

Docket No. 19

Page No. 411

STATE OF MISSISSIPPI

vs.

JOHN BURNETT MORRIS

## CERTIFICATE

(Filed Oct. 2, 1961)

I, James L. Spencer, Police Justice and Ex Officio Justice of the Peace, in and for the municipality of Jackson, Hinds County, Mississippi, do hereby certify that the attached and within:

1. Affidavit
2. Order for Cash Appeal Bond
- [fol. 238] 3. Copy of Judgment
4. Notice from Sheriff
5. \_\_\_\_\_
6. \_\_\_\_\_

is a certified copy of my record in the case, with all the original papers in the case.

WITNESS MY SIGNATURE, this the 2nd day of October, 1961.

/s/ James L. Spencer  
Police Justice and Ex Officio Justice  
of the Peace, City of Jackson, Hinds  
County, Mississippi.

(558-1)

## GENERAL AFFIDAVIT

(Filed Oct. 2, 1961)

STATE OF MISSISSIPPI  
COUNTY OF HINDS

This day personally appeared before me, the undersigned James L. Spencer, a Police Justice of the City of Jackson, and Ex-Officio Justice of the Peace of said City, J. L. Ray who, being by me duly sworn, makes affidavit that John Burnett Morris on or about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississippi, under such circumstances that [fol. 239] a breach of the peace might have been occasioned thereby, did then and there congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there wilfully and unlawfully fail or refused to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi.

/s/ J. L. Ray  
AffiantSWORN TO AND SUBSCRIBED BEFORE ME this the 15 day of  
Sept., 1961./s/ James L. Spencer  
Police Justice and Ex-Officio  
Justice of the Peace

159



[fol. 240]

Docket No. 19

Page No. 411

STATE OF MISSISSIPPI

VS.

JOHN BURNETT MORRIS

JUDGMENT

(Filed Oct. 2, 1961)

This cause this day coming on for trial and the defendant being arraigned in court on a charge of violation of Section 2087.5 of the Mississippi Code of 1942, and having pleaded not guilty and the court having heard testimony and being of the opinion that the defendant is guilty, it is therefore considered by the court and so ordered and adjudged that the defendant Serve a jail term of 4 months and pay a fine of \$200.00 and *bd* committed to jail until paid.

ORDERED AND ADJUDGED, this the 15th day of September, 1961.

/s/ James L. Spencer  
Police Justice and Ex Officio Justice  
of the Peace, Hinds County, Missis-  
sippi

Disposition of Defendant: Mittimus to Sheriff

[fol. 241]

IN THE MUNICIPAL COURT OF THE CITY OF JACKSON,  
 FIRST JUDICIAL DISTRICT OF HINDS COUNTY,  
 MISSISSIPPI

CITY OF JACKSON

VS.

JOHN BURNETT MORRIS

ORDER FOR CASH APPEAL BOND

(Filed October 2, 1961)

This cause this day coming on to be heard on the oral motion of the defendant, John Burnett Morris by and through his attorney, for authority to post a Cash Appeal Bond in lieu of a bond with sureties, and it appearing unto the Court that the defendant is a non-resident of the State of Mississippi and that no person, who has property within the State of Mississippi, is willing to serve as surety on his bond and that the defendant should be allowed to post a Cash Appeal Bond.

It is, therefore, Ordered and Adjudged that the defendant, John Burnett Morris, be and he is hereby authorized to post a Cash Appeal Bond of Five Hundred (\$500.00) Dollars and that the Sheriff of Hinds County be and he is hereby authorized to accept the same.

ORDERED AND ADJUDGED on this 18 day of September, 1961.

/s/ James L. Spencer  
 Municipal Judge & Ex-Officio  
 Justice of the Peace

[fol. 242]

Approved and agreed to:

/s/ (Signature illegible)  
 City Prosecutor

/s/ JACK H. YOUNG  
 Of Counsel for Defendant

\*\*\*

Cash Bond is accepted because John Burnett Morris is a non-resident of the State of Mississippi and knows no person within the State who has property and is willing to sign bond.

# APPEAL BOND

(Filed Oct. 6, 1961)

#12,935

STATE OF MISSISSIPPI )  
COUNTY OF HINDS )

KNOW ALL MEN, That we John Burnett Morris Principal, and ..... and ..... sureties are held unto the State of Mississippi in the penal sum of (\$500.00) Five Hundred & No/100\* Dollars, for payment of which we bind ourselves and legal representatives thereunto, jointly and severally and firmly by these presents, signed with our names this 18 day of September, A.D., 1961.

The condition of the above obligation is that the above named John Burnett Morris on the 15th day of September [fol. 243] A. D., 1961, before the Municipal Court in and for the said county and State, was duly and regularly arraigned and tried on a charge of: Breach of the Peace and was then and there by the said Municipal Court adjudged "Guilty as Charged" and fined in the sum of (\$200.00) \$200.00 and four months in jail dollars and all costs. And the said John Burnett Morris hath prayed an appeal of the said judgment to the next term of the County Court in and for said County and State.

Now, THEREFORE, If the said John Burnett Morris shall appear in person at the next term of the said County Court, and there remain from day to day and from term to term until discharged by law from the said charge, there then this obligation shall be void, otherwise it shall be in full force and effect and binding on all parties, joint and several, therein named.

Given under our hands, this 18 day of September 1961.

/s/ JOHN BURNETT MORRIS Principal  
4655 Jett Rd. N. W. Surety  
Atlanta 5, Ga. Surety

The foregoing Bond was filed and approved this 19 day of September 1961.

J. R. GILFOY,  
Sheriff and Tax Collector  
Sheriff of Hinds County

By /s/ FRED PICKETT  
Deputy Sheriff

(Filed Oct. 2, 1961)

[fol. 244]

Honorable James L. Spencer  
Municipal Judge  
Jackson, Mississippi

Dear Sir:

Pursuant to Section 1204, Mississippi Code of 1942, as annotated, I, the undersigned, Sheriff of Hinds County, Mississippi hereby advise you that I have taken a cash appeal bond from the following named individual, after having duly approved the same; that I have further turned over the said bond to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi.

I hereby notify you as Municipal Judge of the City of Jackson, Mississippi, that an appeal has been taken with regard to said individual and I direct you to send up all papers regarding said individual to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi, as if the appeal bond had been filed with you, from whose judgment the appeal was taken.

Name  
John Burnett Morris

Date of Bond  
Sept. 19, 1961



Thanking you for your compliance with this request,  
I remain,

Sincerely yours,

/s/ J. R. GILFOY  
J. R. Gilfoy, Sheriff  
Hinds County, Mississippi  
by /s/ FRED PICKETT, D. S.

[fol. 245]

12935

STATE OF MISSISSIPPI

VS.

JOHN BURKETT MORRIS

It is ordered and adjudged that a Nolle Prosequi be and the same in hereby entered in the above styled and numbered cause on motion of the City Prosecuting attorney.

Russell D. Moore  
County Judge

STATE OF MISSISSIPPI,  
COUNTY OF HINDS

I, H. T. Ashford, Jr., Clerk of the Circuit Court in and for the said State and County do hereby certify that the above and foregoing is a true and correct copy of the original Minutes County Court and the same is of record in this office in Minute Book No. 21 at page 311.

Given under my hand and the seal of the Circuit Court at Jackson, this the 7 day of May 1963

(SEAL)

H. T. ASHFORD, JR.,  
Circuit Clerk

By /s/ ROBT. E. LILLEY, D. C.

[fol. 246]

## COLLOQUY BETWEEN COURT AND COUNSEL

Mr. Watkins: I did not object to that document just introduced, but I do object to counsel's statement preceding and explaining the document because I don't think they do so accurately. The document is the official record and speaks for itself. I move the Court to strike any of counsel's explanatory remarks which differ from the official document itself.

The Court: Overrule the motion. It is so nearly like the document. I understand what it is.

Mr. Watkins: The first he introduced was a judgment of not guilty. This one is a certified copy of a nolle prosequere. I submit there is an entire difference between a judgment of not guilty and a nolle prosequere in that the charges are still outstanding on a nolle prosequere and is not a judgment of not guilty.

The Court: I didn't understand counsel to say not guilty. I thought he said nolle prosequere. I didn't understand him to say that.

Mr. Watkins: I understood him to use the expression that the County Court had found Reverend Morris not guilty.

Mr. Rachlin: I didn't say that. May I repeat?

The Court: Yes.

[fol. 247] Mr. Rachlin: In the former question I asked Reverend Morris whether he was present in Court when Judge Moore rendered the decision in the Jones case. Then I asked whether he was present when City Attorney Travis got up in open Court and said, "My evidence in all the other cases is the same as in the Jones case and I move to nolle prosequere them all." Then I offered the record, and the record says nolle prosequere. Does that clarify it?

Mr. Watkins: Yes.

The Court: Very well.

Mr. Rachlin: I wonder if I may accept your kind suggestion to what I consider my redirect until Mr. Watkins has completed his cross examination?

The Court: Yes. You can reserve your redirect until he completes his cross examination. Do you want to start on another witness this afternoon for fifteen or twenty minutes, or would you rather wait until this witness is complete?

Mr. Rachlin: There might be some confusion running two witnesses at the same time. I have no objection to it, but since we are not going to be able to finish that witness in any respect—

[fol. 248] The Court: No, I just wondered whether we were going to be able to finish the case tomorrow.

Mr. Rachlin: I hope so.

The Court: Well, we will take a recess until nine o'clock tomorrow morning.

Gentlemen of the Jury, under the instructions I gave you yesterday, separate and be back at nine o'clock tomorrow morning.

(Whereupon the Court recessed until the following morning.)

(Wednesday, May 15, 1963, 9:00 a.m.—the hearing resumed)

Mr. Watkins: Before we resume the cross examination of Reverend Morris, I have been advised that the plaintiffs have served a subpoena on Mayor Thompson for 1:30. He has commitments difficult to break, but we could have him here the first thing in the morning. I don't think we would be completed at that time.

Mr. Rachlin: I have no objection. It would certainly meet my requirement, any time convenient that he has.

The Court: It is apparent we won't be able to finish today, so he can be here at nine o'clock tomorrow morning.

[fol. 249] (Reverend JOHN B. MORRIS resumes the stand for further cross examination)

Cross examination.

By Mr. Watkins:

Q. Before I interrogate you about some of your correspondence I would like to ask you if it is not a fact that as Captain Ray took you and your group out to put you in the paddy wagon on September 13, 1961 that he called your attention to a crowd of people who had followed you out of the waiting room and were following you down toward the point where you were going to get on the paddy wagon?

A. I have no recollection of his pointing out a crowd of people.

Q. I want to ask you if you wrote a communication which is purported to be signed by you to clerical members—

Mr. Rachlin: Excuse me. I am going to ask that the last question be stricken on the grounds that even under the terms of the question as asked by Mr. Watkins this took place sometime after the arrest was made and therefore can't possibly have any bearing. It is certainly common knowledge that when fifteen people are arrested at one time, even if the facts assumed by the question are true, they are misleading, because when fifteen people are arrested at one time it is inevitable that many people will look, if such were a fact. To make that a point now would certainly give a misleading question to the Jury. The fact here is whether there was a crowd involved prior to the arrest, which was the basis, as the officers say, for this arrest—not what happened afterwards. Even if one person were arrested a crowd might follow. I therefore ask the question be stricken.

The Court: I will overrule the objection until all the testimony is in and I will cover the weight to be accorded or things to be taken into consideration by the Jury in



weighing that testimony if it should be permitted to remain in, because at this moment I cannot say definitely whether that is competent or not, but I believe it is true that if there was a crowd anywhere around there then all the facts and circumstances right at the particular moment—even that might have occurred immediately after the arrest, I think would be part of the res gestae and probably is admissible. So I will overrule the objection at this time.

Q. I want to ask you if you can identify this communication purported to be sent by you, dated June 16, 1961, to [fol. 251] clerical members. (Handing to witness)

A. May I look it over?

Q. Yes.

A. Yes, I prepared and circulated this letter to clerical members.

Q. The purpose being to solicit members of your clergy to make the trip with you, the pilgrimage?

A. That is correct.

Q. It states that the pilgrimage will support "those seeking freedom of travel." By that were you referring to the Freedom Riders which were at that time making trips into Jackson, Mississippi?

Mr. Rachlin: I object to the question.

The Court: Overrule the objection.

Mr. Rachlin: As being incompetent and irrelevant.

A. It is exactly as said there. The primary purpose of the trip was to indicate concern for segregation in the church, but it also concerned those seeking freedom of travel, and at that particular time in the history of Mississippi I suspect this might have meant the Freedom Riders or it might be anyone.

Q. Did you have in mind anyone other than Freedom Riders when you wrote that?

[fol. 252] A. Anyone who wished to travel at that time, but we had particularly in mind the Freedom Riders. We make no bones of while we were not Freedom Riders, we

support the Freedom Riders. I mean you don't have to pry to get this. I will say this frankly.

Q. Well, it is becoming easier. I can see that.

Mr. Rachlin: I ask that Mr. Watkins' remark be stricken.

The Court: Yes, I will exclude that. Gentlemen of the Jury, you will disregard Mr. Watkins' remark.

Mr. Watkins: I submit for the record that I can demonstrate by this man's deposition, and those of the others, that they have repeatedly denied any connection whatsoever or interest in the Freedom Riders.

The Court: Well, the thing that I was excluding was your remark, the last remark, which was irrelevant.

Q. To what did you refer in the letter of June the 16th when you said, "While present difficulties may have been overcome by September, dangers inherent in the early stages of the pilgrimage must be frankly faced"?

A. As I indicated yesterday, being an interracial group traveling in the South, we know that about half of the population of Mississippi is White and small percentages [fol. 253] of these persons would object to an interracial group, and, therefore, there might be cause for tension among some of the White people who would object to the nature of our group.

Q. In that statement when you use the phrase "present difficulties may have been overcome," weren't you there referring to the Freedom Riders?

A. I was—

Mr. Rachlin: I want to make sure the Court understood that I have a standing objection to all of these questions.

The Court: Yes, you may have a standing objection, Mr. Rachlin, to all questions of this nature whatsoever, and the objection is overruled and you will not waive the objection by failing to renew it from time to time.

A. Present difficulties may have been overcome—was that the phrase?

Q. Yes.

A. These difficulties were occasioned by the unlawful arrest of countless numbers of persons who were traveling. Most of these persons, I assume, were the Freedom Riders.

Q. Did you anticipate in coming to Jackson that you were [fol. 254] going to do things for which you would be jailed?

A. We anticipated the possibility that anywhere within the South it was a possibility we might be arrested.

Q. In this first letter soliciting members for your group, I will ask you if you did not tell them—and I quote, "No one should apply for the trip unless they are prepared to undergo a period in jail."

A. I said that, and I also said that no martyrs should apply because we did not need anyone who felt he wanted to go to jail.

Q. Didn't you also tell them in that letter, "Only those who are prepared to refuse bail, if this is deemed advisable, should apply"?

Mr. Rachlin: Since we are referring to a specific document, would it be permissible for Mr. Morris to have the document in his hand to make certain that quotations are not taken out of context?

Mr. Watkins: He has read it very carefully.

The Court: I will permit him to have the document at such time as he needs it.

Mr. Watkins: I need some of them for my questions.

The Witness: Suppose I hold it until you need it.

Mr. Watkins: That is perfectly all right.

[fol. 255] Q. Do you remember my last question?

A. The bail factor.

Q. Yes.

A. Would you repeat the question?

Q. Didn't you tell them in the letter only those who are prepared to refuse bail, if this is deemed advisable, should apply?

A. I did.

Q. Who was going to make the decision as to whether it was advisable for them to get out on bail or refuse bail?

A. If this became a necessary consideration for a decision, I expect the group itself was going to make the decision.

Q. Did you anticipate physical violence on your trip to Jackson?

A. I have said that, being perfectly aware of the nature of our group and traveling in the South, we were not naive about the fact that some of the White citizens object to interracial groups, so we anticipated the possibility of violence anywhere directed toward us, but at no point had we any desire for this and we genuinely hoped that it would be avoided, and, of course, there was not.

Q. In that same letter you told the prospective applicants, "Anyone having any doubt he could be constrained from returning blows in the face of physical violence should not consider going."

[fol. 256] A. Exactly.

Q. On the trip did each member of the group use his own judgment or was he bound by decisions of one or more in-charge of that group?

A. His own judgment with regard to what?

Q. Decisions as to what he would do on different contingencies that might arise during the course of the trip.

A. The group, in terms of plans that pertained to the entire group, made decision as a group. If somebody wanted to brush their teeth, that was their own decision.

Q. Didn't you have a steering committee that made the decisions?

A. We did not. We thought we might, and it is stated in here we would.

Q. You stated in the letter you would?

A. We did. This was before the occasion.

Q. When you stated in that letter, "While in transit, individual judgment on strategy and itinerary will be welcomed, but a final determination will be made by a steer-



ing committee," what did you mean by decisions on strategy?

A. Strategy, where we would go, when, and how long we would stay when we went. For instance, going to All Saints College in Vicksburg how long to stay and what was our timetable that day.

[fol. 257] Q. You don't consider strategy a military term?

A. I used the phrase in here that we would move in a disciplinary group like a military operation, and it is a Christian tradition to be a disciplined group.

Q. I was talking about the word "strategy." Don't you consider that a military term?

A. I consider it a good Christian term.

Q. You weren't using it in a military sense?

A. We were not a military group, so, if you see some connection, we were seeking to be disciplined as like a military group.

Q. And you so stated in that letter, didn't you?

A. Yes.

Q. Was your trip planned for any illegal purpose?

A. Was our trip—

Mr. Rachlin: I didn't hear.

(The last question was read by the reporter)

Mr. Rachlin: I wonder if Mr. Watkins would spell that out, because it assumes the witness is aware of all the possibilities of legality or illegality, and I think the question should be phrased in the terms of specific terms of illegality. Was he suggesting they were going to commit perjury, or rape, or talking about something in particular?

Mr. Watkins: Maybe this will clear it up for you and Mr. Rachlin.

Mr. Rachlin: Thank you.

Q. What do you mean in the letter when you stated, "It is hoped that those participating will be able to remain at

convention through September 20th for the society-sponsored dinner," and continuing, "It is more than humor, however, to suggest that your meal that night could be one served in some county jail"? Why were you telling your applicants that instead of attending a proposed dinner at the church convention on September the 20th, they could very well be eating supper in a county jail, unless you intended some illegal action?

A. Are you reading from the letter of June 16?

Q. Yes.

A. Can you refer me to the place in here?

Q. Yes, I think I can: I refer you to the third paragraph of the second page.

A. Again, this is no more than I have already said, that is, that we were aware of the possibilities of being arrested because we were an interracial group, but we had, as is indicated in all these documents, a continuing hope that [fol. 259] this would not happen. We hoped in this instance for all to be on hand for a dinner, an occasion we had sponsored in Detroit, with the Archbishop of Capetown, South Africa, speaking, in which we had invested a considerable amount of time and planning and wished to be there, all of us.

Q. On the date of that letter, who did you consider the "front line-fighters in the field of civil rights"?

A. The date of this letter, the front line fighters in the field—

Mr. Rachlin: Your Honor, what difference does it make what he considered as a front line fighter for civil rights?

The Court: Are you objecting?

Mr. Rachlin: I am.

The Court: Objection overruled.

A. At that particular point the front lines in Mississippi were being manned chiefly by the Freedom Riders. There were many front lines, all over the place. Mr. Watkins, you really didn't have to get this to know the nature of our

trip. In the statement we had here yesterday we clearly stated we hoped to make the trip on through, but we could not enjoy the luxuries of being separated racially as we [fol. 260] went. I can't quote it exactly, but therein is caught up the substance of this religious pilgrimage, which refused to be divided racially, yet was not unaware of the situation we faced.

Q. Doesn't the third page of that letter contain this statement:

"These are times when the church must launch out into bold, new ways to cleanse itself of marks of caste and class, and lend its support for front line fighters in the field of civil rights"? Now, my question is your reference to the front line fighters in the field of civil rights was to the Freedom Riders.

Mr. Rachlin: The question is improper. I think the document speaks for itself. Either it says or doesn't.

The Court: Overrule the objection.

A. You are reading a concluding generalized paragraph there, where I am saying that the church must launch out in bold, new ways in Washington State and Florida and New York and Boston. I have not denied we would consider front line fighters in Mississippi to be the Freedom Riders, which we were supporting, although we were not Freedom Riders. I object to your narrow interpretation of the general statement that the church must be [fol. 261] rising up to face the opportunities and challenges in all times and places, as if this were the only thing at stake.

Q. All I am asking you is what you mean by that language and did you mean the Freedom Riders.

A. Among others. Freedom Riders then in Mississippi and Alabama.

Q. Even at the time you wrote this first letter of June 16, 1961, you had some doubts in your mind as to the wisdom of this proposed project?

A. I did.

Q. And you expressed those doubts in this letter, didn't you?

A. I believe I did make some reference thereto.

Q. Follow me as I read. "Some of you may be disturbed at the proposals set forth here, while others will chide me for even debating its advisability. I take full responsibility for the decision to proceed. Having weighed everything carefully and consulted with many persons, I am convinced that this should be ventured. We do not know now the final wisdom of the matter." That is your statement, isn't it?

A. It is.

#### OFFER IN EVIDENCE

Mr. Watkins: I now offer in evidence a letter that has been identified as dated June 16th 1961.

[fol. 262] The Court: Let Mr. Rachlin see it.

Mr. Rachlin: Thank you, Your Honor. You anticipated my request. Your Honor, I object. I enjoyed reading the document. I am sure Mr. Morris will stand by every word he says, but I must object on the ground it is irrelevant, incompetent and immaterial and prejudicial.

The Court: Overrule the objection. Let it be received and marked as an exhibit.

(Same was received and marked as Defendant's Exhibit No. 2, which Exhibit follows here below:)



## EXHIBIT DEFENDANT'S #2

Witness MORRIS

May 15 1963

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY  
Room 200, 5 Forsyth Street, N.W.,  
Atlanta 3, Georgia. Jackson 5-7975

June 16, 1961

RE: *Prayer Pilgrimage from New  
Orleans to General Convention*

## TO CLERICAL MEMBERS:

On Tuesday, September 12, 1961, a bus carrying 37 Episcopal clergymen will leave from New Orleans on a "Prayer Pilgrimage" to Church and Church-related educational institutions between that city and Detroit where the General Convention opens on September 17th. This is to invite [fol. 263] you to consider making application to accompany this group on what may be a trip of momentous significance.

*Purpose:*

Aware of our own needs within the Church, the primary thrust of such a tour will be to show concern that Church sponsored institutions should have no restrictions based on race. However, through announcement within the week and by actual presence at the time, the pilgrimage will indicate support of those presently seeking freedom of travel, with access to normal facilities connected with interstate travel. Any ruling by the I.C.C. will need opportunities for demonstration of the effectiveness of its implementation. Whatever the resolution of the present struggle regarding interstate travel, there will be a continuing need within the Church. With the final focus being the General Convention, we will be indicating our hope that the Church in all regions may show greater leadership in setting in order its

own household as well as in providing guidance for the community at large.

An itinerary is being prepared. It will include secondary schools and colleges operated by the Church in both the North and South. At our stops we will give thanks for those places that have no barriers, penitently admitting our own involvement in the sinful system of separation and segregation at so many levels. At institutions still closed to some because of race, we will pray that both a concern as well as a capacity to proceed might prevail in each case. [fol. 264] We will pray for national unity, and for a fuller utilization of the climate in the North that should permit even greater steps by the Church in righting the wrongs in its life. With Convention as our terminal point, we will pray that the Church in all areas may come alive to its opportunities and responsibilities.

#### *Participants and Their Selection:*

Participants should arrive in New Orleans by late afternoon on September 11th in time for a period of preparation before departure the next day. The bus will be chartered so as to permit visitations enroute and a flexibility of schedule. We will use regular terminal facilities for meals. In all likelihood, we would not stop for the evening until reaching Tennessee, which means one or two nights in transit at the outset.

While present difficulties may have been overcome by September, dangers inherent in the early stages of the pilgrimage must be frankly faced. No one should apply for the trip unless they are prepared to undergo a period in jail if this develops through efforts to utilize terminal facilities in a normal fashion. Only those who are prepared to refuse bail, if this is deemed advisable, should apply. We trust and hope that we will go safely on our way, but alternatives must be faced. Anyone desiring a martyr role for himself should not apply. Anyone having

any doubt he could be constrained from returning blows in the face of physical violence should not consider going.

[fol. 265] To Clerical Members Page Two June 16, 1961

The selection of participants for the pilgrimage will be done here. We will endeavor to have a balance of white and Negro priests, as well as some of other backgrounds. As high a proportion of Southerners as possible will be selected. Subjective factors will be weighed and I shall consult with others to obtain a tightly coordinated and carefully screened group. You are encouraged to discuss this with other clergy who might like to accompany you. The pilgrimage is not limited to members of the Society, but to any Episcopal clergymen. The reason for this criteria instead of something more ecumenical is to make the impact within the Church more significant, and due to the nature of the institutions to be visited and the destination. It is anticipated that groups of clergy of other churches will make similar tours before or after ours.

While in transit, individual judgment on strategy and itinerary will be welcomed, but a final determination will be made by a steering committee. It must be understood that the entire venture will be subject to cancellation up until the last minute. The act of making application will be understood as a willingness to forego plans if this is deemed advisable. In every regard, we must have a discipline akin to that in a military operation.

#### *Financial Arrangements for Participants:*

We will pay for the bus and for any overnight accommodations [fol. 266] for the group during the pilgrimage. Participants are to pay for their meals while on the pilgrimage. We will also allow up to \$75 for expenses in getting to New Orleans, in excess of \$25. Disbursement in most cases would be made after Convention upon receipt of an accounting of travel costs to New Orleans. The Society will not be

responsible for any expenses while in Detroit or for travel home. It is hoped that those participating will be able to remain at Convention through September 20th for the Society-sponsored dinner. It is more than humor, however, to suggest that the meal that night could be one served in some county jail!

*Special Funds to be Raised:*

We must raise funds to cover costs to be borne centrally. Your help with this is urged. Your own contribution, if you are not able to apply, will be welcomed and it is hoped you can secure assistance from concerned laymen. Please make such contacts yourself in our behalf, as we are already swamped here. It is estimated that expenses for the group, apart from individual expenditures, will come to about \$5,000. If you want to apply for the trip and are unable to muster funds you will need personally, it is suggested that you seek assistance from friends. Demands here will not permit assistance beyond covering the costs mentioned.

*In General:*

More detailed briefings will be sent to those accepted for [fol. 267] the pilgrimage. I can understand that some interested in going will be unable to do so. I hope all will carefully consider the possibility. Please write me as soon as possible, using the form below and the enclosed envelope. We hope to have participants who can make the entire trip. Anyone only able to go part of the way may register this and we will see what the possibilities are.

To Clerical Members

Page Three

June 16, 1961

These are times when the Church must launch out into bold new ways to cleanse itself of marks of caste and class, and in its support for front line fighters in the field of civil rights. Some of you may be disturbed at the proposal set forth here, while others will chide me for even debating its advisability. I take full responsibility for the decision to



proceed. Having weighed everything carefully and consulted with many persons, I am convinced that this should be ventured. We do not know now the final wisdom of the matter. We may pray that such a pilgrimage will be for the greater glory of Christ Jesus in this awakening era of concern among both those who call Him Lord and those who do not. Of which will it be said: "Well done thou good and faithful servant. . . . when assessment is made for the sources of changes so long needed?"

Yours faithfully,

(Rev.) John B. Morris  
Executive Director

JBM:jlw

[fol. 268] Cross examination (Continued).

Q. I hand you what purports to be a copy of a communication of yours of June 28th 1961, to the applicants for the pilgrimage and ask you to identify it.

Mr. Rachlin: I couldn't hear Mr. Watkins.

Mr. Watkins: A letter of June the 28th 1961 to the applicants.

A. Yes, this is my letter of June the 28th.

Q. That letter indicates, does it not, Reverend Morris, that there was a relation between your trip and the Freedom Rides?

A. I have indicated earlier we were supportive of the Freedom Riders.

Q. And you so show in that letter that you realize that your group would be considered as "another or the last of the rides."

A. I stated that it was possible in all likelihood we might be viewed in this fashion. We have made every effort in all our documents seeking to interpret our pilgrimage within the Episcopal Church for its religious and primary

trust to the church, but whatever people, whether Redbook Magazine or others, may make of our trip we cannot be totally responsible.

Q. At the time of that letter of June 28th 1961, had you [fol. 269] discussed the plans of your pilgrimage with Martin Luther King, Jr.?

Mr. Rachlin: I object to the question as being solely for the purpose of prejudice and having no useful purpose whatsoever.

The Court: Overrule the objection.

Mr. Rachlin: Thank you.

A. I had.

Q. Was it understood that he would issue a statement in support of your plans?

A. He did issue a statement.

Q. My question was did you have an understanding with him in advance that he would issue a statement in support?

A. I had such an understanding before he actually issued it, yes.

Q. That was my question.

A. How many days before, I don't know.

Mr. Rachlin: May I interrupt? I don't recognize the mayor, but I think he is seated with us and I wonder if we could do the mayor a great favor by asking him to testify now, and it wouldn't be necessary for him to come back on some other occasion. I would be honored if we could interrupt the testimony of Reverend Morris.

[fol. 270] Mr. Watkins: That would depend upon the mayor's plans. I do not know, but I will find out.

(After conference)

Mr. Watkins: We are willing to give up the cross examination of this witness by Mr. Rachlin to put the mayor on the witness stand.

The Court: Very well, be sworn.

(Whereupon the witness was sworn)

The Court: By consent of the parties to the lawsuit, the cross examination of the witness now on the stand, it is agreed, will be terminated for the time being in order that Mayer Thompson may now be called as a witness and testify at the request of the plaintiffs. Take the stand.

Mr. Rachlin: May the record show that the plaintiffs appreciate Mr. Thompson coming here at this time and interrupting a very busy schedule in a big city and committing himself in this action presently being heard before the Court.

The Court: Very well. *you* may so state on the record.

ALLEN THOMPSON, called as a witness and having been first duly sworn, testified as follows:

[fol. 271] Direct examination.

By Mr. Rachlin:

Q. I wonder if you could tell us how long you have been mayor of the City of Jackson?

A. About fifteen years—almost all my life.

Q. And you are a very successful politician?

A. Yes.

Q. Where I come from, we don't have them last that long. Now, as part of your functions as mayor, do you have any direct authority over the police department?

A. I have real authority over every department and everyone of the 1700 employees, but we have a mayor and commission from of government, which delegates to the different department heads operation of their departments, and really the only authority that I have as mayor is to instruct my police department to uphold the law and to prevent violence.

Q. Thank you. Now, you say you have a commission form of government in Jackson?

A. Yes.

Q. Were you ex-officio commissioner of the department of police?

A. No, sir. The police department is one of the ones which is under my—although they are all under my direct [fol. 272] supervision. There is no way, really, to explain it, sir, except that I work mostly with everyone of them, but I do a great deal of delegation of authority.

Q. Now, Mr. Mayor, in your capacity as mayor, did you appoint the defendant in this proceeding, James Spencer, to be an ex-officio justice of the peace?

A. With the approval of the commission.

Q. Is there a special term of office for that position?

A. No, sir, he's just appointed to serve, probably as long as I'm mayor.

Q. Does the same appointive power have the authority to remove him from office or appoint someone to succeed him in office?

A. Only for good reason. Now, you take, we have had just two or three police justices in my memory, and I've lived here all my life. Many times decisions are made which are different from what I believe, but I have never yet asked the judge to make any decision; I've never commented on any decision he has made; he is never required to make any decision that's satisfactory to me.

Q. I understand that. Don't think I was suggesting otherwise. What I wanted to ascertain: Does the appointive—the same body who appointed the justice of peace at [fol. 273] least have the authority to remove him for cause?

A. If there would be any cause and if I would want to, over a period of time it could be done.

Q. Thank you. Now, one or two more questions.

A. Yes, sir.

Q. Has it been the policy of the City of Jackson to maintain segregation of the races?

A. You know, we never thought about that until this trouble came along. We have lived side by side here for a hundred years. We go ahead and operate just everybody makes a good living. We don't think about any policy. But,



as a matter of fact, the separation of the races has been voluntary here for years and years: We haven't used any ordinance or any authority along that line that I know of—and as I said, I've been mayor for a long time, and I was a lawyer here for a long time before I got into this job. But the separation of the races in Jackson has proved tremendously successful. People have been happy. They make good livings. We get along well. And to show you how much the people in this city believe in it, when I was thinking about getting out of politics and getting into an honest living about two years ago, I had a great many petitioners from my colored friends, PTA, church members, [fol. 274] Boy Scout folks, asking me to go along because they approved of—not my policy, but the policy set up over the years, of a separation of the races.

Q. Now, you have just mentioned that this policy is voluntary. Now, the Continental Trailways bus station is a few blocks from your office, isn't it?

A. Two or three.

Q. Yes. Now, were you aware, Mr. Mayor, that on September 13, 1961, and for some time prior to that and subsequent to that, there was a sign in front of the Continental Trailways bus station which said "White Waiting Room Only, By Order of the Police Department"?

A. That used to be the thing that has come up over the years. You will notice now it is just "White" if you want to, "Colored" if you want to.

Q. At that time, it said "By Order of the Police Department," didn't it?

A. That's right. That's all a matter of record.

Q. Do you think that that indicates a voluntary separation of the races when you say "By Order of the Police Department"?

A. It is something that has just come up, as I said, over the years; just been a policy.

[fol. 275] Q. You would not consider that then, I take it, an instruction to the police department to keep people who were not white out of that waiting room?

A. Well, it's very similar to the way things go along and change. You take when I was in New York many years ago, they had the same things. When I was in Washington. But, of course, now things are completely different. And it's because of the change in rulings, the change in court procedures, the change in everything else.

Q. Your Honor, when you were in New York, did you ever see a sign which said "White Only, By Order of the Police Department"?

A. No, but when I was there 25 or 30 years ago, that was the law.

Q. No doubt about it. Now, you don't think then that anybody reading that sign would feel that he was ordered, if he wasn't white, to stay out of that waiting room?

A. In all probability. But people just didn't—the local people and the Mississippi people really didn't even think about it. Like today, after those signs are removed, go anywhere they want. It's only when our outside friends who wanted to come down and try to correct our happy and pleasant city came in and tried to change what we were doing; only then was attention called to that. Frankly, [fol. 276] I believe that you will agree in your wisdom that what was done at that time, of course, I had nothing much to do with it. I'm more or less of an administrator there leaving the actual work to other people, but I think that you will see that what was done at that time we were lucky in it in a way, we were wise, but I believe that we had more of a real feeling on it and had more or less divine guidance in that if that had not been done we could have had some of the serious troubles that they had in Washington when they had the football game and all of these Negroes ran across and attacked all of these white people and they had a tremendous race riot, and in some of these other cities where you didn't stop all the real ground for disturbance right at the first.

Q. Well, Your Honor, if you will permit me, you have been a lawyer for many years, I take it. I don't mean to

cast aspersions, but how long have you been a member of the bar in Mississippi?

A. Since 1931.

Q. And you know, of course, that on June 13, 1961, there was a Mississippi statute which required by law that there be two waiting rooms, one for white and one for colored, in every bus station in Mississippi?

[fol. 277] A. To be honest, I had never practiced that part of the law.

Q. But as the mayor of the city, you must have been aware of the existence of such.

A. I'm sure you people have called that to my attention many times since, but I never thought about it until my friends from the outside came down.

Q. Were you personally aware of that sign which said "White Waiting Room Only, By Order of the Police Department"?

A. That's a funny thing. I don't ever remember really ever actually seeing it, going about my business, anymore than I would a telephone post.

Q. The sign is different now?

A. Oh, yes. When the court said "Take that 'by order of the Police' off," we took it off.

Q. There's an order now to take the sign down completely, isn't there?

A. Is it?

Q. Well, didn't the court—

A. Well, it will come down in a minute if it is.

Mr. Rachlin: I have no further questions. I want to thank the Mayor for giving us his time, and I give the witness to Mr. Watkins.

[fol. 278] Mr. Watkins: I don't care to cross examine the Mayor. I have tried that before.

(Witness excused)

JOHN B. MORRIS, recalled as a witness and having previously been sworn, testified as follows:

Cross examination resumed.

By Mr. Watkins:

Q. We were talking about your communication to applicants of June 28, 1961, I believe.

Mr. Rachlin: I wasn't able to hear.

(Question was repeated)

Q. Were any persons other than Episcopal clergymen considered for the trip?

A. No.

Q. What is an organization known as the Living Church?

A. It is a weekly publication for Episcopalians, a news publication and journal of thought and opinion.

Q. Wasn't it contemplated that they would send a representative along with the/pilgrimage?

A. This was a possibility.

Q. Wasn't it contemplated that one or more national [fol. 279] publications would be represented on the pilgrimage?

A. This was this possibility.

Q. And you so stated in that communication?

A. I believe I did. I did in some.

Q. Fourth paragraph?

A. Yes.

#### OFFERS IN EVIDENCE

Mr. Watkins: We offer in evidence this communication of June 28, 1961, from Reverend Morris to the applicants.

The Court: Let it be marked and received in evidence.

Mr. Rachlin: I'd like to see it.

The Court: Oh, excuse me.

(Same is handed to counsel opposite)



Mr. Watkins: To save time on this, may I ask the Reverend to be reading the next one?

Mr. Bachlin: I have already indicated my objection to this document, Your Honor.

The Court: Well, overrule the objection.

(Same was received in evidence and marked as Defendant's Exhibit No. 3, which Exhibit follows here below:

[fol. 280]

EXHIBIT DEFENDANT'S No. 3

WITNESS MORRIS

May 15, 1963

The Episcopal Society for Cultural and Racial Unity  
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia  
Jackson 5-7975

To Applicants for the Prayer Pilgrimage:

This is to acknowledge receipt of your application to go on the pilgrimage outlined in my letter of June 16th. Forgive this impersonal reply. I am sure that you have more than a little at stake in making your decision about this and I am gratified to hear from you.

I will have to wait until early August to designate those of the applicants who will be accepted to fill out the complement of thirty-seven. I realize that you will need to know as soon as possible whether you will make the trip and I will do everything I can to line it up as soon as possible. A mailing goes in early July to all clergy announcing plans and inviting applications and we will want to have had time for some response to this. I should certainly give priority to Society members ordinarily.

As indicated in the original letter the entire plan must be subject to cancellation up until the last moment. I am keeping as closely in touch with the situation as I can so

that we may be adequately advised what the best course of action is to the extent that our pilgrimage relates to the Freedom Rides. My feeling is that our primary thrust [fol.281] being Church institutions and the general convention gives our plan a validity that will warrant following through regardless of what is done on the Rides. However, while we may see the basic goals and concerns, our pilgrimage will in all likelihood be viewed as another or the last of the Rides.

I am writing this letter on June 28th, the day before a statement in support of our plans is due to come from Martin Luther King, Jr. At this time, also, I am waiting to hear whether several prominent clergy will be able to go with us . . . there is a good chance they will. The statement from Dr. King and the presence of these particular clergy will be a help. You might also want to know that THE LIVING CHURCH has indicated they might send someone with us, and it is probable that several national publications will be represented.

We do need more applicants, but I am aware of the fact that my letter went out only ten days ago and I believe they will be forthcoming. Please speak with clerical friends about this. I am enclosing several copies of the original letter and application forms. Also, I am sure you will want me to share quite frankly with you my concern for securing the necessary finances. By mid-July I should know what prospects are, for I have a good many letters out on this. Your decision to go on the pilgrimage certainly exempts you from a primary concern here, but any contacts with interested laity will be welcomed and needed!

[fol.282]

(OVER)

So much for procedural matters. Let me tell you know what the tentative itinerary is, asking that you not publicize this until after I have. In order of visitation the towns

where there are Episcopal institutions we would visit are: New Orleans, Vicksburg, Jackson, Birmingham, Sewanee, Versailles (Ky.), Cincinnati, Gambier, with Detroit as the terminal point. You will know in each case the schools involved, except that in Jackson and Birmingham we would probably not be involved in any institutions. With apologies for contrived aliteration, tea in the terminal at Jackson will be in order after the end of our first day. An overnight drive to Birmingham would see us there for some parish's early celebration on Wednesday. Our primary stopover would be Sewanee and we would hope to stay at the Sewanee Inn which is owned by the university but has previously refused service to Negroes or mixed groups. The approach as outlined in the June 16th letter would prevail—offering prayers at each place, of either intercession or thanksgiving, or both!

We would have one or two of our *numeber* designated as chaplain(s), with the responsibility of directing our meditations and prayers in transit so that we be kept turned to our chief object of devotion—Our Lord Jesus Christ—notwithstanding the provocations of others. Possibly we would have prepared for the pilgrimage a series of special [fol. 283] litanies—for the nation, for the Church, for its schools, for those who would deter us or harass us, etc. Obviously you will want to bring a hymnal and prayer book and we will make ample corporate use of them . . . but more later on what to bring.

The Greyhound company is prepared to charter a bus for us. If the funds are not found it may be necessary to take regularly scheduled runs, although this would not suit the visitations of campuses and churches enroute very well. Even then we must have considerable funding . . . but that is my problem now.

Let me have any second thoughts, ideas about what we should do, etc. I am looking forward eagerly to the op-

portunity to be with the pilgrimage and to get to know you better.

More later.

Faithfully,

(Rev.) John B. Morris  
Executive Director

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Mr. Bachlin: In an effort to speed up proceedings this morning, might it be advisable for me to suggest that in view of Your Honor's rulings on two of these documents that Mr. Watkins offer them all as either single exhibits or as a group—whichever he chooses—and you note my objection, and we might be able to proceed faster.

[fol. 284] Mr. Watkins: It's perfectly all right with me. It does not eliminate the question about asking the witness about it.

A. This is a letter to clerical members, of June 20, 1961.

Q. Does that letter to your members indicate that Martin Luther King, Jr., had issued this statement?

A. It quotes it.

Q. And under what date did Martin Luther King issue his statement?

A. Apparently on the same day as this letter, June 30th.

Q. That is what you say in that letter, isn't it?

A. Yes.

Q. Did you see the statement before it was issued?

A. No, I got a copy of the press release that his office issued that same day.

Q. Where was the statement issued?

A. The statement was issued by his office, to the best of my knowledge, the Southern Christian Leadership Conference.

Q. Where is that?

A. In Atlanta.



Q. And you received it on the same day?

A. I received it after it had been issued the same day. I [fol. 285] don't that it—might have been issued a day or two before with a date line for June 30th. I don't remember.

Q. That communication, Reverend, referred to your trip as implementing the spirit of the Freedom Rides. Is that correct?

A. That's correct.

Q. Did you publicize that statement?

A. I did not publicize it except to quote it here. It went out from Dr. King's own organization. I did not review the statement in advance of its preparation. I received a copy and reported it to our clerical members here.

Q. What do you mean in that statement when you told members to "beware of our general tendency to side with caution rather than boldness."

A. Now, you're not referring to Dr. King's statement, are you?

Q. No. A later statement, toward the last.

A. What paragraph?

Q. (Indicates)

A. What did I mean by "beware of our general tendency to side with caution rather than boldness"?

Q. Yes.

A. I would have to read the rest of that paragraph, if I may.

Q. All right.

[fol. 286] A. (Reading) "I hope you will consider applying for the Pilgrimage. At the same time, let me repeat my appreciation of the fact that there will be some who would like to go but cannot because of circumstances surrounding their situation. Each must be the judge of this. Be responsible. Also, beware of our general tendency to side with caution rather than boldness. I shall not judge the merits of anyone's decision."

Well, I don't know that I can explain that descriptive part any better than it speaks for itself. I believe most of

us tend to make decisions that are more cautious than they are bold if we're given an alternative about something. The instincts of self-preservation and self-protection.

Q. That was urging the membership to be more bold and militant in this move, wasn't it?

A. Yes.

Mr. Watkins: We offer that in evidence as an exhibit to the testimony.

The Court: Let it be received in evidence and marked. Let Mr. Rachlin see it.

(Same handed to Mr. Rachlin)

Mr. Rachlin: Same objection.  
[fol. 287] The Court: Overrule the objection.

(Same received in evidence and marked as Defendant's Exhibit No. 4, which Exhibit follows here below:)

#### EXHIBIT DEFENDANT No. 4

WITNESS MORRIS

May 15, 1963

The Episcopal Society for Cultural and Racial Unity  
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia  
Jackson 4-7975

June 30, 1961

To Clerical Members:

This is a second and final memorandum regarding the Prayer Pilgrimage. A copy of my previous letter of June 16th is enclosed, together with the form for making application or contributing.

The Rev. C. Kilmer Myers, Vicar, Chapel of the intercession, New York City, ("Light the Dark Streets"), will serve as Chaplain on the Pilgrimage. In this capacity he will direct our thoughts and prayers toward primary

commitments, and seek to keep us humble, forgiving and serene.

The Rev. Martin Luther King, Jr., said in a statement today: "The Episcopal clergymen who will ride on this pilgrimage, using terminal facilities at the bus stations enroute, will implement the spirit of the Freedom Rides fully since they will use restroom, eating and other facilities without regard to race. The misguided opinions of [fol. 288] those who urge stopping the Freedom Rides because they challenge the unjust system of segregation and expose the breaking of Federal laws by merchants and officials in the South, will be shown against the absolute necessity to continue the challenge if customs, practices, people and institutions are to be changed to conform to democratic and moral principles."

It is too early to know just how many applicants we will have from which to select the thirty-seven participants, but as of this writing we need more. It is likely that, in addition to white and Negro clergy, we will have Japanese, Chinese, Puerto Rican, and American Indian backgrounds represented. The richness of our own tradition will be shown and certainly the many faces of America will be dramatically portrayed!

As previously indicated, our primary concern will be with Church schools and colleges. Our secondary level of witness in the South is directed toward interstate travel. Dearborn, Michigan has just been in the news in connection with its restrictive housing practices and I have asked the Mayor of that city if we might make Dearborn our last stop to learn what the churches and others in Dearborn are doing to encourage open occupancy in housing. Perhaps this will adequately show our concern with problems in all regions.

I hope you will consider applying for the Pilgrimage. At [fol. 289] the same time, let me repeat my appreciation of

that fact that there will be some who would like to go but cannot because of circumstances surrounding their situation. Each must be the judge of this. Be responsible. Also, beware of our general tendency to side with caution rather than boldness. I shall not judge the merits of anyone's decision.

Those who can't go *can* help. We desperately need funds to see us through. Personally, from discretionary sources, but moreso—please speak in our behalf with concerned lay persons. Lots of small contributions will strengthen the Pilgrimage, but it will take a number of quite substantial gifts to allow us to carry through with plans. Your vigorous efforts here will be appreciated and, indeed, upon them may well hang the implementation of the venture.

Faithfully,

/s/ John B. Morris  
(Rev.) John B. Morris  
Executive Director

Q. I have handed you a letter dated July—, 1961, to the clergy from you, have I not?

A. That's correct.

Q. In that letter—and I'm referring specifically to the fifth paragraph of the letter—you continue to stress the necessity for a militant spirit among your group, with [fol. 290] reference to the pilgrimage, don't you?

A. That's correct. Militancy is an ancient Christian virtue, perhaps reflected in the song "Onward Christian Soldiers," if one is militant for Christ's sake and not for something else.

Mr. Watkins: Would you care to see that?

(Hands to counsel opposite)

Mr. Rachlin: Objection.



Mr. Watkins: We offer the communication of July, 1961, in evidence.

The Court: Objection is overruled. Let the document be received in evidence and marked as an exhibit.

(Same received in evidence and marked as Defendant's Exhibit No. 5, which Exhibit follows here below:)

EXHIBIT DEFENDANT'S No. 5

WITNESS MORRIS

May 15, 1963

The Episcopal Society for Cultural and Racial Unity  
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia  
Jackson 5-7975

July—1961

To the Clergy:

Attached is a letter I directed last month to clerical members of the Society in which plans for a Prayer Pilgrimage were outlined. Although it's mid-summer, the weather may be warm, and you may be on or headed for [fol. 291] vacation, please give this your careful consideration. It could speak profoundly to the Church and the nation, and it could be a significant milestone in your life and ministry if you will come with us.

Our Chaplain for the pilgrimage will be the Rev. C. Kilmer Myers (*Light The Dark Streets*) of New York, whose task it will be to help us remain humble and forgiving as thoughts and prayers are directed toward primary commitments. Will you join your prayers to ours in a litany for the wholeness of Christ's Church and for dedication in meeting the needs in all regions of the country? Will you help to light the dark recesses of America and keep the Church abreast of this era of accelerating change? Will you come with us?

The steps required to personally accept a role of responsible militancy are difficult and I realize that some wanting to take them are not able to join us in the pilgrimage for reasons connected with their situation. There are other ways for these to help and vicariously go up to General Convention. Your prayers as we go are asked. Your help financially is needed—and it will be greatly appreciated if you would seek contributions in our behalf from concerned laity.

More than even your presence on the pilgrimage, however, we want—for Christ and His Church—your commitment to the Church's teaching which we have simply reiterated in the Society's Statement of Purpose. We hope [fol. 292] you will want to express this commitment partly through membership in the Society. An application form is enclosed. We need you and, if the testimony of many is so, there is a mutually sustaining and committing benefit through sharing in this fellowship of concerned churchmen. As a member, you will receive our newsletters and various other materials similar to the enclosed reprint.

If a description of the Society's approach to things is sought, I hope it will be said that it is our concern to encourage *responsible militancy* within the Church in the implementation of its inclusive nature without regard to caste or class. Ultimate goals in all places are the same, although we have an appreciation of how immediate needs may vary. Let men commit themselves and determine what this means in terms of the problems and opportunities facing them in their respective situations. Perhaps we can help more and more churchmen to take the bolder step rather than the cautious one more usually ventured.

You can help us in this by providing your people with an opportunity to learn about the Society and it is for this purpose that I am sending you a poster I hope you will find useful. We will furnish copies of the Statement of Purpose for your parish mailing if you want.

[fol. 293] Finally, if you are to be at General Convention and whether you are a member or not, or go by bus or plane, the flyer on our dinner at the Statler Hotel announces the opportunity to hear the Archbishop of Capetown who will be our guest at Convention. If you are there, I will hope to have an opportunity to talk with you and, in the meantime, I welcome hearing from you about all of these matters.

Faithfully yours,

/s/ John B. Morris  
(Rev.) John B. Morris  
Executive Director

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To:

The Rev. John B. Morris  
Room 200  
5 Forsyth Street, N. W.  
Atlanta 3, Georgia

Date.....

*Check if Applicable:*

- ☐ In accordance with plans outlined in your letter of June 16th, I would like to apply to go on the PRAYER PILGRIMAGE from New Orleans to Detroit, September 12-16, 1961.

SIGNED: .....

---

- ☐ I will not be able to accompany the pilgrimage for the entire tour, but could give ..... days. (Indicate preferable dates.)
- ☐ I want to apply for the pilgrimage but am unable to to secure funds to cover my personal expenses.

- ☐ I am unable to go on any of the pilgrimage but enclose my check for \$..... to help with expenses, or am willing to pledge \$..... toward expenses which I will send ..... (date).

[fol. 294]

- ☐ I am able to go and can contribute toward the central expenses and enclose my check for \$..... or pledge \$..... which I will send ..... (date).
- ☐ I have talked with the following priests who are interested in going. (Please list with addresses and phone numbers.)

.....  
(Checks may be made payable to ESCRU.)

NAME: .....

(Please type or print)

ADDRESS: .....

CITY: ..... STATE: .....

TELEPHONE NUMBER: .....

PARISH: ..... POSITION: .....

(A letter dated June 16, 1961 not copied here because it appears in the record on page 176.)

...



Q. I hand you a letter dated August 4, 1961, from you to the pilgrimage applicants.

A. That is correct.

Q. At that time in August 1961, you were having difficulty getting as many as you wanted to make the trip, weren't you?

A. We had space for 37.

Q. At that time you had 21, didn't you?

[fol. 295] A. 22, it indicates here.

Q. All right. You were disappointed also because only six of them were Negroes, weren't you?

A. I believe I did reflect some such feeling.

Q. Was financial help then offered to your group by the organization headed by Martin Luther King, Jr., the Southern Christian Leadership Conference?

Mr. Rachlin: Object to this question.

The Court: Overrule the objection.

A. Offer financial help for what purpose?

Q. For the purpose of the pilgrimage. That's all I'm talking to you about.

A. I would have to review the letter to refresh my memory but to the best of my recollection, we were receiving funds for the cost of the pilgrimage from all over, and chiefly from within the Episcopal Church. We did discuss with Mr. Walker the question of if there should be occasion for needing bail funds would there be any possibility of assistance from his organization.

Q. Who is Mr. Walker?

A. Mr. Wyatt Walker is the Executive Director of the Southern Christian Leadership Conference.

Q. Read with me on the first page of this letter:

[fol. 296] "The Southern Christian Leadership Conference has said they could probably help on these basic expenses if it is necessary. This is the organization headed by Dr. Martin Luther King, Jr., who came out publicly in

support of our plans the end of June as you have seen in my letter of June 30th to clerical members."

Was that financial assistance that was made available to you?

A. No, it was not.

Q. You also considered changing your starting point from New Orleans to Jackson, didn't you?

A. We did at one point. I say, I did. I don't know if it was ever thoroughly considered.

Mr. Rachlin: Your Honor, this, of course, is irrelevant. What difference does it make what was considered? We are only considering what was done and what happened and not mental processes of the witness. I move that it be stricken.

The Court: Overrule the motion and the objection.

Q. You contemplated on that, didn't you, the possibility of moving it from New Orleans to Jackson as a starting point?

A. I noted it at some point.

Q. If you will look at the third page, please.

[fol. 297] A. "At the starting point, whether New Orleans or Jackson." Yes.

Q. You also told them in that letter that Dr. Wyatt T. Walker was to direct your preparations connected with non-violent discipline, didn't you?

A. That's correct.

Q. Is that the workshop that we have talked about before that was held in New Orleans the night of the 11th of September?

A. We readily indicated in our depositions that Mr. Walker had considered with us non-violent discipline in the context of an evening session where we spent a much greater amount of time in our own deliberations chiefly in preparation of the message to the general convention in Detroit, that you introduced yesterday in evidence. Therefore, we would not refer to our evening's meeting as a workshop because this was an incidental part of the pur-

pose of the meeting. He did direct us in our session though in non-violent discipline. It's a question here of whether you are going to describe the whole evening as something in the manner of a workshop or if it was a part of the evening, which it was.

Q. Is Wyatt T. Walker a member of your church?  
[fol. 298] A. He is not.

Q. Did he plan to go to Detroit where your church convention was taking place?

A. He was scheduled and did in point of fact sit at the head table at our dinner in Detroit.

Q. Was that the purpose in going to Detroit?

A. To sit at the head table? That is all he did in our behalf when he was there. For any purpose or reason, this is all he did while there.

Q. Don't you state in that letter he is going to Detroit to be there to meet those who have been in jail?

A. Refer me again to my specific words.

Q. Yes, sir. Look at the third page.

A. "He will come to Detroit also in all likelihood to be on hand when those who have been in jail arrive probably just in time for the ESCRU dinner on September 20th."

Q. Now, you are talking about there in August of 1961 about Walker meeting in Detroit with those who have been in jail, before your trip even begins?

A. It is caught up in all of these documents, a realistic recognition of the possibilities of being arrested because of the interracial nature of our group. At the same time and throughout the primary thrust and emphasis and concern directed to the church is enunciated and the hope we would not be arrested is set forth clearly, our intention not to be arrested but to go on through, but we were not naive about the unlawful arrests that had been taking place.

Q. Reverend Morris, you and the other three plaintiffs in this case have repeatedly testified, both on depositions and those who have testified in the courtroom already, that you did not want to be arrested.

A. That is true.

Q. —on this trip, haven't you?

A. That is correct.

Q. I want—And that is still your testimony?

A. That is correct.

Q. I want to ask you if it is not a fact that you did want to be arrested and that you did decide in advance exactly how many were going to be arrested?

A. We decided how many were going to be involved in the various facets of the group, and at every and all points. We did not decide that we were going to be arrested.

Q. I wish, if you would, turn to Page 4, and I direct your attention to the last sentence of the first paragraph of that letter: "In the present context of things we will want to send at least ten of the pilgrimage participants to jail." [fol. 300] Did you make that statement?

A. In the context of the entire letter, yes.

Q. Now, there is no expressed hope there that you wouldn't be jailed. You say "We will want to send at least ten of the pilgrimage participants to jail." Didn't you?

A. I said, "In the present context of things."

Q. Well, "We will want to send at least ten of the pilgrimage participants to jail."

A. I deny your interpretation of the "We will want" in a private communication facing a situation as it appeared to be, and again our hope, belief, felt and stated that we would not be arrested.

Q. And that's exactly what you did. You changed the number, but you sent 15 of them to jail, including yourself?

A. We did not send them to jail—

Mr. Rachlin: I object to the question. There is no record that anybody sent himself to jail.

The Court: I will sustain the objection to that question.

Mr. Rachlin: I am not aware that a private citizen can put himself in jail.

Q. In this communication of August 4th you urged members to build up publicity on the trip, did you not?



A. I do not recall. If you will shew me that, I can verify it.

[fol. 301] Q. I will call your attention to the second paragraph of the fourth page:

"With these restrictions it might be helpful for you to alert any press persons known to be sympathetic . . . they might want to do an advance story. Don't be reticent or self-conscious about the matter if your concern is to strengthen our witness through its advertisement in advance. The New York Herald Tribune has indicated a definite intention of sending someone on the pilgrimage as has the Living Church. There will probably be other press personnel."

A. I did say that at that time.

Q. You were very much interested in the press build-up of this trip, weren't you?

A. I would say rather that we are aware of the communications within the modern world being in part accomplished through the press and were not opposed to Christian witness being revealed to others. At the time of the trip itself we did not send out any advance communications indicating our itinerary, nor as we left New Orleans to Vicksburg, et cetera, did we indicate that our next step was to be wherever it was.

Mr. Watkins: If it please the Court, we offer in evidence [fol. 302] the communication of August 4, 1961, to the applicants.

(Hands to counsel opposite)

Mr. Rachlin: Same objection.

Mr. Watkins: We offer in evidence the communication dated August 4, 1961.

The Court: The objection is overruled and the document received in evidence and may be marked.

Mr. Rachlin: Could I ask the courtesy of the Court to explain to me the relevancy of these exhibits?

The Court: Well, in view of your statement yesterday, I can see the wisdom that it would be probably improper for me to give my reasons in the presence of the jury at this time, but I am thoroughly convinced the testimony is competent for a determination of the ultimate question in this case.

(Same received in evidence and marked as Defendant's Exhibit No. 6, which Exhibit follows here below:)

EXHIBIT DEFENDANT'S #6

WITNESS MORRIS

MAY 15 1961 .

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY  
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia  
Jackson 5-7975

August 4, 1961

[fol. 303] To PILGRIMAGE APPLICANTS:

You are one of twenty-two priests accepted for the Prayer Pilgrimage tentatively. A list of these persons accompanies this letter. It has seemed wise to discretely turn down only two applicants.

The tentativeness of your selection is due only to a request now that all prospective participants review the list enclosed and let me know if there are any significant objections to any included thereon. Speak now or forever hold your peace! Anything you write me will be held in confidence. I feel rather confident that this procedure is a formality, and one I am sure you will appreciate, so if you don't hear from me again quite shortly you may assume that your place is reserved.

I expect that we will still fill out our complement of 30 to 37. A mailing to all of the Church's clergy inviting their participation or financial support has only just gone out

in the last two week and should bring some response. Also, I may direct one more letter to clerical members of the Society with further information on plans and offering one more chance to enlist. You are certainly free to encourage friends of yours to apply.

I may be in error, but I believe that 16 of the accepted applicants are white and 6 are Negro. I am sorry that we do not have more of the latter and, also, that thus far we do not have any of still other backgrounds. You might especially direct your recruiting efforts to fill in as you [fol. 304] see a need. I would certainly like to see more Negro priests from the South involved. I have not expected any white clergy from the "deep South" but there is a lack here. However, the Negro clergy should find their situation far more supportive of their participation—relatively speaking, that is.

You will want to know how the fund raising is coming. This has caused me more worry than anything for I believe we'll have our personnel. Presently we have about \$1,600.00 that has come from many small contributions—mostly from fellow clergy unable to go with us. I have estimated that an additional \$500.00 to \$1,000.00 will be forthcoming from appeals that are now out. The Southern Christian Leadership Conference has said they could probably help on these basic expenses if it is necessary. This is the organization headed by Dr. Martin Luther King, Jr., who came out publicly in support of our plans the end of June as you have seen in my letter of June 30th to clerical members. With this offer of help if needed it now seems that we can plan on carrying through from the financial standpoint, but any donations you are able to secure for the pilgrimage apart from your personal expenses will be welcomed.

—2—

I am sorry we haven't the resources to say that all of your expenses to the starting point, home from Detroit,

etc., can be paid. You will recall from the June 16th letter [fol. 305] that we are prepared to pay up to \$75.00 on travel to New Orleans after the first \$25.00 of expense in getting there. You can check with the air lines or with whatever travel conveyance you will use and determine the cost. Then we will pay for group accommodations enroute. You must cover your meals enroute as well as meals and accommodations in Detroit and travel home.

Some have said that they could take care of their travel to New Orleans, thereby saving funds here for use with others. Most will require this assistance, however. Please let me know on the enclosed form just what you will require within the terms set forth. Do not feel reluctant to indicate your need . . . it is only that some may be receiving aid from their parishes or others in their home area and I need to know just what the demand on us financially will be.

The Greyhound Company said yesterday that equipment might not be available when we need it although I talked with them in June and it seemed certain that it would. We will pursue this matter. The fact that equipment may be unavailable for charter purposes, however, will not cause any significant change in our plans. We can take regularly scheduled runs. The disadvantage of this is that it would mean that our itinerary would have to be curtailed and it would not be as simple in getting to campuses or parish churches. An advantage to us would come in cost for presumably only a portion of the pilgrimage group will be able to complete the trip and it would be a rather [fol. 306] expensive item to have a half-empty bus make the last part of the journey. Some dramatic benefit would be lost without the chartered bus and we would have a more difficult time in sustaining group process.

Still another alternative would be to take either a chartered bus or a regularly-scheduled one as far as Sewanee or Atlanta and then go by private car in a motorcade. This also would allow the size of the conveyance(s) to be



more suited to the actual number still in the group at any one time. Therefore, if there is a possibility that you might drive as far as Atlanta or Chattanooga enroute to the starting point and leave the car there for use on the trip north, please indicate the availability of a car on the enclosed form. We would reimburse the owner at a normal rate for the use of his car and would cover gasoline costs. Assistance in getting to the starting point would be available ~~as~~ <sup>per</sup> above to be applied against your driving costs to the point where the car was left in readiness.

Depending on various things above we might change our starting point to Jackson, Mississippi. Something would be saved in travel to New Orleans since Jackson is closer to most everyone. It might not be as easy to fly into Jackson, however, but not impossible. I was in Jackson two weeks ago and I believe we could spend Monday night, September 11th, at a Negro college where our preparations would be made. We would only miss one school in New Orleans and could go over to Vicksburg to visit All Saints' College before any of the group kept an appointment with [fol. 307] the Jackson jailer. I will handle a decision on this in the way that seems best strategically and economically.

—3—

The Pastors Union of Dearborn, Michigan, has expressed support of our plans to make a visit there the last stop on the trip. In June I telegraphed the Mayor of Dearborn and said we would like to hear what he and others there were doing to break down Dearborn's restrictive housing patterns. No reply has come from him but the ministers' group took the initiative to suggest that they meet with us. Together those of the pilgrimage who have not remained in Mississippi and the Dearborn pastors group will consider the role of the churches in promoting open *ocupancy* in housing. This is the dynamic of our witness in terms of northern needs that I am using in press releases.

You know from the June 30th letter that the Rev. C. Kilmer Myers of New York will be Chaplain to the group, serving as our spiritual director as we journey together. At the starting point, whether New Orleans or Jackson, the Rev. Wyatt T. Walker, Executive Director of the Southern Christian Leadership Conference, will direct our preparations connected with non-violent discipline. He will come to Detroit also in all likelihood to be on hand when those who have been in jail arrive probably just in time for the ESCRU dinner on September 20th.

Now having made repeated reference to prospective de-[fol. 308] tention of some in jail let me state clearly my understanding of how our plans should go. Mr. Walker and I discussed this today and he is in agreement with what is projected. Within limits the group can make some change as it goes. . . . If there are 30 participants we should plan on between one-half and one-third completing the entire tour so that the concern might be carried to each place and, symbolically, the torch carried to Convention. This would mean that between fifteen and twenty would sojourn awhile in probably a Mississippi jail. A few might seek light refreshments the morning of the 12th when we are in Vicksburg and they would then be held there by the Vicksburg jailer. The greater number intended for the witness of incarceration would probably choose to go to Jackson for this. Those who will bear the burden of watching colleagues taken off in the paddy wagon (as I did in Jackson two weeks ago) will continue the trip so that the message of concern may be carried to Detroit. Presumably the group will be able to determine who does what in a manner agreeable to all. I would hope that some would be left to go on through, and, indeed, the bail factor may require that we limit those to be jailed to around ten if there is not enough money to bail them out when decided.

Now on the bail situation. If anyone wants and is able to remain the four to six months in jail he may but I would not urge it on anyone. In nearly all other cases

connected with Freedom Riders a certain length of time in the jail is sufficient to make the witness effective. I think [fol. 309] that we should be very flexible in this matter: If someone has to hurry home because of an emergency or to be on hand for Sunday services it should be up to him when he is bailed out. There are preliminary hearings three times a week in Jackson so that the most you would have to stay in jail pending a hearing would be two days. Above that it is optional. If most of those jailed chose to come up to Detroit for the benefit of their witness there, it would seem that they could get out on Tuesday, September 19th, so that they could be at the ESCRU dinner and be met by persons at convention.

—4—

Regarding the question of bail money: Obviously we do not have funds for this as we attempt to simply meet our needs on basic expenses. Mr. Walker of SCLC has indicated he felt quite confident that funds designated for this purpose could be procured and I will be in touch with him in the next few days on this further. The bail money is, of course, refundable once the case is closed. It is felt by all that the case presently in the courts will be decided favorably, thereby causing a return of all bail monies. It is unlikely, however, that disposition of this case will be made favorably in the right court until sometime after our pilgrimage. If for some reason you would prefer to take care of your own bail please let me know and this will further strengthen our available resources for others. Should something develop in the next few weeks to indicate that a sufficient amount for bail for at least ten of our [fol. 310] group is not available I will write you again. In the present context of things we will want to send at least ten of the pilgrimage participants to jail.

Except for our itinerary you may discuss any of these plans with others but kindly refrain from revealing who the other participants are. That will be known in due

course. With these restrictions it might be helpful for you to alert any press persons known to be sympathetic . . . they might want to do an advance story. Don't be reticent or self-conscious about the matter if your concern is to strengthen our witness through its advertisement in advance. The NEW YORK HERALD TRIBUNE has indicated a definite intention of sending someone on the pilgrimage as has the LIVING CHURCH. There will probably be other press personnel. Within the next month I shall get out one or more releases announcing our itinerary and other plans. A release is out for today about the Dearborn group welcoming us but I doubt that it will be widely reported.

Sewanee and the various church schools surrounding it will be a major stop. Those who get that far will want to stay at the Sewanee Inn which reportedly last year would not serve dinner to a visiting Negro bishop. The Inn is a Quality Court owned by the University and operated under some form of contract only made in the last year or two. I trust we will have our meals there and find the accommodations available. To I The situation may have been changed with the trustee's decision to open the uni-[fol. 311] versity this past June. However, to insure the availability of reservations and because this is a busy time for visiting parents on the campus would those of you whose names I have checked please write and ask for a double room . . . sending some deposit along. You might make this reservation through some Quality Court in your city insuring that you have a receipt, etc. Ask for a double room without indicating your roommate, or just say another clergyman.

If we are to make our witness in collective fashion we must arrive intact and begin together, so please plan on withholding yourself from provocation of local laws until the Pilgrimage has begun.

Pardon the length of this. More later!

Faithfully,

(Rev.) John B. Morris



The Court: I believe we will take a ten minute recess.  
(Whereupon the court recessed for ten minutes)

### After Recess

Q. Reverend Morris, two instances you have referred to a public statement issued by Martin Luther King in support of the pilgrimage. Is he a member of your church?

A. No, he is not. May I qualify that?

[fol. 312] Q. Yes.

A. He is a Christian, so we are both members of the Christian church. He is not a member of my denomination.

Q. Do you know the denomination to which he does belong?

A. He is a Baptist.

Q. I believe before the recess I had handed you a communication of yours dated August 19, 1961, to the pilgrimage applicants. Is that correct?

A. This is a letter of mine dated August 19th.

Q. By that time, you had finally decided to start the trip definitely in New Orleans, hadn't you?

A. I believe that is set forth in this letter.

Q. Why did you finally select New Orleans rather than Jackson?

A. There had been some indecision.

Mr. Rachlin: I submit that is irrelevant. The state of his mind is not important, why he started there in place of some place else.

The Court: Overrule the objection.

A. Mr. Watkins, I will attempt to answer the question although I, along with my counsel, have no understanding of why you ask all these questions which have nothing to do with the facts of my arrest and the suit we bring. But I am glad to tell you if it's of interest, and I'm glad to go [fol. 313] into any and all of the background on these papers, if—

**Q.** Just answer my specific question. Why did you select New Orleans?

**Mr. Rachlin:** Your Honor, I request that you ask Mr. Watkins not to interrupt the witness.

**The Court:** I—

**Mr. Rachlin:** —If he feels it is not responsive to his question, he could request it of you and not the witness.

**The Court:** His answer was not responsive, and I will require the witness to answer the question.

**A.** We desired to go on a pilgrimage testifying to the Episcopal Church of the various concerns which we have that God in Christ might be revealed more fully within his church in all regions in the various parts of the country within the church in the ways in which are needed most immediately now, so we wished them to go from one end of the country to the other. We went in this way from the South to the North, from New Orleans to Detroit. There are major cities that are sort of in line with each other. If the convention had been in Los Angeles, we probably would have gone from Atlanta, something like that. We desired to go through the South to visit church schools, indicating our concern that they are still segregated, so many of them. [fol. 314] We desire to go to the North to visit—

**Mr. Watkins:** I hate to interrupt the witness. This is not responsive to my question.

**The Court:** Yes, I think that's responsive to the question. Your question was why did he decide to go to New Orleans rather than Jackson. Now, anything he had in mind which was why he made the change, he can explain.

**A.** We desired, as I said, to be in the South in terms of church schools; we desired to be in the North in Dearborn, Michigan, a very segregated community from the standpoint of housing patterns, and the appointment there was kept by some of our group; we desired to go to our church's national convention, having come through this pilgrimage of various points that indicated symbolically, as it were, a

sermon in action. Our concerns at the same time, one and the same time, we were desirous of gaining support for the front line fighters, as has been said before, or the people who are leading in the area of social change that we feel is needed in the community, that we feel is needed in the church, and at that point in history it was, more specifically, the Freedom Riders' movement which we were supportive [fol. 315] of, although we were not a Freedom Ride. For these reasons we moved from New Orleans to Detroit, and Jackson was en route.

Q. Did you select New Orleans as a beginning point—Is one of the reasons that you wanted to confer with the representatives of CORE in New Orleans?

A. We met in—It would have been more convenient for certain representatives of CORE or Southern Christian Leadership Conference to have met with us in New Orleans. In point of fact, I don't believe any representatives of CORE were at our meeting. Representatives of Southern Christian Leadership Conference were.

Q. In the letter which you have in your hand, you stated your reason for deciding on New Orleans was that it was more convenient for meeting with representatives of CORE, wasn't it?

A. This at one point was a reason for meeting there. It was certainly not a determinative or primary reason.

Q. Did CORE at that time offer you legal assistance in connection with your pilgrimage?

A. I can answer in general terms. If you want me to answer specifically, I'll have to look through this.

Q. I think we can save time if we read from the letter. [fol. 316] A. I can tell you plainly at one time they did offer—I will have to look at this to locate the time.

Q. I want you to read with me the last paragraph on Page 2 of this communication, if you will, please, sir:

"CORE has said that they could put up \$6,000.00 for bail assistance, which, at the going rate of \$500.00 a man,

would cover twelve of our group. They indicated they might be able to help further if necessary but we can't count on that in our planning. I am hopeful that a full assurance on bail for the balance of the group will be obtained within the week. Several of the participants have indicated they would—or might be able to—cover their own bail. I shall look for the full amount needed and we can see later how this is handled. There very well may be many contributions to come forth after the fact of being jailed and from this office we are prepared to receive donations for such a bail fund. Someone has suggested that we stay in jail until the Church bails us out! I wonder how long this would be?"

Did you ever decide the answer to that question as to how long you would have stayed there if you waited for the Church to bail you out?

A. We did decide not to seek funds from other sources [fol. 317] than from spontaneous concern of churchmen and other concerned persons, and it appears then it was a week for 13 of the 15 and a little later for 2. We did not receive bail funds from organizations which are listed there which had indicated that they might be able to help.

Q. You did not receive any from CORE?

A. No.

Q. I direct your attention to the first sentence on the top of Page 3 of that communication:

"CORE has also said that they would provide us with legal counsel and I am meeting their chief lawyer this Monday as he stops over at the Atlanta airport, probably en route to Jackson. I will discuss all questions pertaining to legal points with him then."

Did CORE make their legal counsel available to you?

A. Their legal counsel assisted us without charge in our trial in municipal court. I actually was never clear whether it was CORE's volunteering of its services or whether he in his own right volunteered his services.



Mr. Rachlin: In view of the fact that is obviously referring to me, Your Honor, I wonder if I might then say and take the liberty of the Court to say that I have no authority from anybody except Mr. Morris to act on his behalf.

[fol. 318] Mr. Stennett: If the Court please, if we need Mr. Rachlin to testify, I suppose we might put him on the witness stand.

The Court: Well, do you want his remark stricken from the record?

Mr. Watkins: Yes, sir, I move that they be stricken.

The Court: I will sustain the motion to strike that part of the remarks by counsel for the plaintiffs as being voluntary on his part, and if he desires to appear as a witness later on, he would have to take the witness stand to testify and be subject to cross examination.

Q. Reverend Morris, my question is, did CORE make their legal counsel available to you, as you stated in that communication?

A. I can only repeat myself, Mr. Watkins. They put me in touch with a man named Carl Rachlin, whom I met in the Atlanta airport. From there on, my relationship was with Mr. Rachlin personally and direct, and never through CORE, and, as I indicated, whether his time given in our behalf was from his own generosity and concern or whether it was in behalf of CORE, I don't know. He is a lawyer with a firm and does a great deal of law work other than for [fol. 319] CORE, and I rather suspect that what he did for us was really on his own time.

Q. Reverend Morris, that may very well be the case. My question to you is, why did you select the language and say "CORE has said that they will provide us with legal counsel."

A. Because they had said that.

Q. And did they do so?

A. In point of fact, I do not know.

Q. Also in that communication, you use this language. And I will ask you to follow me:

"All in all, though, I think you can count on becoming familiar with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for us when he said: 'About jail—Here am I, send me. I'm not grave, but I'm obedient.'"

Is that a correct quotation from your letter to the applicants?

A. That is.

Q. Now, my question is, "obedient" to whom? Who was directing that they go to jail?

Mr. Rachlin: I object to the question because the letter doesn't necessarily refer to any particular person. It may [fol. 320] refer to a doctrine, a principle of religion, or any other thing, and therefore I say there is no basis or preface upon which the question could be asked in that form, and I object to it in that form.

The Court: Overrule the objection if he knows.

A. Obedient to God in Jesus Christ, who compels our commitment as Christian clergymen and laymen that race not be a factor in the church or in the community.

Q. And that is to what you referred when you referred in this letter to obedience in going to jail?

A. The person quoted there used the phrase, obedience. "I may not be brave, but I'm obedient."

Q. And you quoted him in your letter as meaning obedience to going to jail?

A. No. Obedience to Christ.

Q. And you did not intend that to.—The whole quotation is about jail there. "About jail—Here am I, send me. I'm not brave, but I'm obedient." You mean the word "obedient" did not mean going to jail?

A. Christ upheld imprisonment for one's convictions. We would be obedient, I hope.

Q. I ask you if you didn't, a little further down in that letter, make this statement:

[fol. 321] "We arrive in Jackson late . . ."

I think that should have been "When we arrive in Jackson late Tuesday afternoon, it will be time for supper and we can seek to have it then and there which will mean that the Jackson jailer would be our host for the evening."

What you are telling the applicants there is that you may decide to go to jail Tuesday night the 12th rather than wait until the 13th on Wednesday, isn't it?

Mr. Rachlin: I think that is an improper reading of that letter. The letter says they may be in jail; he didn't say they would go to jail. That's a very important difference. There is nothing that I know of which can compel a person to go to jail on his own initiative. Some intervening force, such as the police officers in this case, are the only way they can go to jail. If the police officers had obeyed their duty, they wouldn't have been in jail.

Mr. Watkins: We object to that and move it be stricken, Your Honor. Mr. Rachlin wasn't there.

The Court: I will overrule the motion and will overrule the objection to the question, and will let him answer it if he knows.

A. Mr. Watkins, may I quote from the first document you [fol. 322] submitted into evidence, in trying to answer this point? Something within that bears directly on this question of jail. May I have that privilege of quoting from that, as you introduced it or as I have it in my pocket?

Q. If we go back through the documents, I don't think we will ever get through.

A. This is the one that was introduced yesterday which is public knowledge. Nothing that we've ever concealed or had in our files, but has been available to any—You are reading now from letters which were private correspondence with a group of persons who were beginning to be a group, although not all had met each other, and I am writing them here on a number of occasions pursuant to our plans. Now, there is implied here something that might have been concealed, whereas in point of fact in our state-

ment you introduced yesterday there is something that bears on this.

Q. All I am asking you is, doesn't this statement in your letter clearly state that your group may have as its host for supper on Tuesday night the 12th the jailer rather than waiting until Wednesday the 13th?

A. This is no more than the realization of the fact that we were an interracial group and did not know whether or [fol. 323] not we would be allowed to eat together as we intended to do, believing it would be sinful to separate, and our brother priests who were Negroes would have to eat some place else. And we realized that this would be viewed with hostility by some, and it apparently was viewed with hostility by your police authorities.

Q. The point I am trying to get over is that you were undecided as to whether the group would go to jail Tuesday night or Wednesday. And I want to read you the next sentence:

Mr. Rachlin: I object to Mr. Watkins' comment since that was not part of the question.

The Court: Overrule the objection.

Q. I would like to read you the next sentence to try to help you on that.

Didn't you say: "I am trying to determine whether we could stay at a college campus that night if it seemed advisable to await the next day for this appointment with destiny"? And you are talking there about you haven't decided whether you are going to spend Tuesday night at Tougaloo and if you did, then you would wait until Wednesday for this "appointment with destiny". And by "destiny," you meant jail?

[fol. 324] A. We didn't mean we wanted to go to jail, but we realized the possibility of this, and we thought the meal together would be of assistance.

Q. And what you were saying here was that you hadn't decided whether or not that would be Tuesday night or Wednesday, had you?



A. Whether we would eat together at a public facility.

Q. And go to jail?

A. No. We could not send ourselves to jail. And if you will read all of the document, you will find the intention and the hope and that which was our prayer at the last minute was that we would not be arrested.

Q. Who decided finally the question of whether you were going Tuesday night or Wednesday?

A. The group decided.

Q. Without any outside help?

A. I recall no outside help.

Q. All right. Let me read you the next sentence in the letter.

"I do not see any reason for not having our supper upon arrival, but I'll wait until my meeting Monday with CORE's lawyer to see what procedure would be best."

Didn't you let that meeting determine whether it would be Tuesday or Wednesday?

[fol. 325] A. I don't think it was decided when we would leave for Chattanooga until we were in New Orleans—

Mr. Rachlin: Just a minute. This is a rather ridiculous thing for me to do because I must ask Your Honor to caution the witness that he has the privilege, if he chooses to accept it, of not giving any testimony of conversations with me, since I am his attorney, and while I am not suggesting to him that he should exercise the privilege, I think Your Honor should advise him that he may have that privilege that such conversation with me would not be admissible in evidence.

The Court: Well, I will advise him—If Mr. Rachlin was your personal attorney to advise you, you have the privilege of claiming the right to refuse to answer because privileged communication between your lawyer and you are privileged, and you are not required to answer; but if he was not your lawyer but was CORE's lawyer, and was conferring with you not as your personal attorney, then it would be your duty to answer the question. Do you understand that?

A. CORE having made an offer of legal assistance, having introduced me to Mr. Rachlin, we were then in no wise obligated or involved with CORE, and it was my understanding [fol. 326] that he was our attorney from that point on. I am perfectly glad to answer this particular question anyway.

The Court: Very well. It's a privilege you have to refuse to answer if you desire, but you can go ahead and answer it if you want to and waive the privilege.

Q. Why did you refer to him in this letter again as CORE's lawyer, if he was actually yours?

A. He was also CORE's lawyer. At that point we had not retained him and actually we never did retain him. As I said, he volunteered his services.

Q. Then at that time, the time you wrote this letter, he was still acting as CORE's lawyer only, wasn't he?

A. I am mentioning him descriptively here, who he is. We had in fact provided no retainer or formal contractual arrangement. This does not answer the question as to who he was engaged by at any single point. This is who he was. But I can still answer the question.

Q. Did you meet with him on the Monday and make the decision as to whether you would go Tuesday or Wednesday?

A. No, we made no decision with him regarding that.

Q. Did you suggest to the members of your proposed trip that they bring certain matter as reading material in jail? [fol. 327] A. I don't recall that.

Q. Well, let me read you this sentence in the letter:

"For reading in jail I suggest the P.B. . . ."

That's the prayer book?

A. Yes.

Q. "... your Bible, and other things you may want to meditate upon."

Did you suggest that they bring those for reading in jail?

A. I suggested they bring those for reading in jail were they to find themselves in jail.

Q. You didn't qualify it that way in your letter, did you?

A. Not in that sentence, but if you want to read everything and be willing to face the whole question of this, you will find our intention and hope was not to go to jail.

Q. I want to face the whole thing on this, and that is the reason I am introducing these in their entirety in evidence in this case.

We now offer in evidence the communication dated August 19, 1961.

The Court: Has counsel opposite seen it?

(Counsel hands to counsel opposite)

Mr. Rachlin: Your Honor, I bore myself, but I must [fol. 328] say that I object for all the previous reasons I have stated.

The Court: It will be overruled. Let the document be received in evidence and marked as an exhibit.

(Same received in evidence and marked as Defendant's Exhibit No. 7, which Exhibit follows here below.)

# EXHIBIT DEFENDANT'S #7

WITNESS MORRIS

MAY 15 1963

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY  
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia  
Jackson 5-7975

August 19, 1961

## TO PILGRIMAGE APPLICANTS:

We now have twenty-six clergy preparing to go on the Prayer Pilgrimage. Of the twenty-two listed in my letter of August 4th, one has had to withdraw due to circum-

stances beyond his control. Five priests have been accepted since that date. A revised list is enclosed. All of you have the letter of the 4th, and I must refer you to the second paragraph therein as still applicable. I have received no objections to any of the participants listed previously and I am confident that both those on the original list and those added will welcome the company of one another.

Three applicants from the original number and two of [fol. 329] those recently added are still due to return their information forms advising me of what funds they will require and, also, serving to confirm their intention to go along. If I have checked here ..... you are one of these. Please send it to me right away.

As you can see we still have room for more participants. Also, I still have a hope that additional Negro priests and some from other non-Caucasian backgrounds will apply. I have continued to make contacts with various people who ought to be in a position to encourage such folk to consider going.

Several things are considerably more settled than when I last wrote you. Chief among them is my signing of a contract with the Greyhound Company yesterday for a chartered bus departing from New Orleans at 8:00 A.M. on Tuesday, September 12th, enroute to Jackson, with stops at a school in New Orleans and a college in Vicksburg, Mississippi. Estimated arrival time in Jackson, following the two stops and a box lunch on board, is about 5:30 P.M. The bus will deposit us at the Jackson terminal and is not scheduled to go beyond. The cost of this bus service for your information is \$227.40. The bus can accommodate 37 passengers.

It seemed best to stay with the original plan of beginning in New Orleans because it is a reasonably easy place to get to by public conveyances, it is a more suited place to assemble without difficulty, and our commencing there al-



lows us to see two church institutions before possible [fol. 330] incarceration. Also, it is a more convenient place for representatives of CORE and SCLC to meet with us in preparations. The bus is chartered only to Jackson because of the likelihood of there being no one to continue in it at a great expense.

The suggestion has been made that we hope that the entire group might visit the jail, staying only the minimal time required and then posting bail and continuing the trip. I think there might be value in the first part of the suggestion (if sufficient bail is located and thought to be potentially forthcoming), but an alternative would be for a portion of the group to be bailed out forthwith and continue the trip. Of course, at that point, if we hope to make General Convention, the group, whether all or a part, might

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have to break into sections in order to cover all points desired. On the other hand, only one or two institutions after Jackson could well suffice symbolically—and there aren't a great many more enroute. Sewanee should certainly be on the list for after Jackson. You may read something in the press about a situation there only a week ago when two Negro priests were not served at a university-owned facility on campus. The excuse given was that it is leased out by the university. These were students in the summer Graduate School of Theology.

I do not *think* that we should utilize automobiles in [fol. 331] making the balance of the trip as I suggested in the previous letter as a possibility. Too many factors regarding time and itinerary are uncertain and will have to remain so. We cannot plan very carefully for after Jackson. The most I will make definite will be travel from Chattanooga to Sewanee, with the Rev. Robert Hunter of that city assisting. He would be coming with us except for the fact that his wife expects their first baby at about

the time we would be in Jackson! We will, undoubtedly have some service in his church while passing through.

Beyond Sewanee we could take whatever means of travel seemed best, including, possibly, air coach if we were to want to go directly to Detroit at that point. The schools north of Sewanee are primarily St. Margaret's in Versailles, Ky., and Kenyon in Ohio. However we travel to Detroit, we will then probably take another bus (if the entire group is still together) or cars out to Dearborn to meet the Dearborn Pastors' Union. The appointment with them is Saturday afternoon, September 16th. It could be changed if necessary, I am sure.

To date we have received \$2,600.00 in contributions for the pilgrimage and more will be forthcoming. We will be a.o.k. as far as basic costs go it now appears. If anything remains in this account there will undoubtedly be further need as far as getting the participants to return to Jackson for a hearing—if other cases have not caused disposition before such time. Also, there have been considerable [fol. 332] expenses incurred here in connection with the Pilgrimage which could stand recompense, although I am presently listing all monies received as being available for expenses involved directly in the action of the plan.

CORE has said that they could put up \$6,000.00 for bail assistance, which, at the going rate of \$500.00 a man, would cover twelve of our group. They indicated they might be able to help *further* if necessary but we can't count on that in our planning. I am hopeful that a full assurance on bail for the balance of the group will be obtained within the week. Several of the participants have indicated they would—or might be able to—cover their own bail. I shall look for the full amount needed and we can see later how this is handled. There very well may be many contributions to come forth after the fact of being jailed and from this office we are prepared to receive donations for such a bail fund. Someone has suggested that we stay in jail

until the Church bails us out! I wonder how long this would be?

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CORE has also said that they would provide us with legal counsel and I am meeting their chief lawyer this Monday as he stops over at the Atlanta airport, probably enroute to Jackson. I will discuss all questions pertaining to legal points with him then. . . . Let me remind you, however, of the possibility that the ICC might rule favorably before the time of our journey and I sincerely [fol. 333] hope they will. I think that we should hope for the changes that mean no jail—not because we aren't prepared to go, but so that the barrier might simply fall for the benefit of everyone. Also, while I am realistic, I am not beyond hoping and praying that even our pilgrimage might influence the authorities to change voluntarily. All in all, though, I think you can count on becoming *familiar* with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for others when he said: "About jail—Here am I, send me. I'm not brave, but I'm obedient."

I am working on the place we will stay in New Orleans Monday, September 11th. It will probably be either at a Negro college campus or at a motel which will take integrated groups. I will let you know the place in my next letter. Everyone should plan on arriving by 6:00 P.M. that day so that we can have supper together and an adequate amount of time for our preparations session. I will give you the directions to where it will be and you will have to take a taxi from the airport or wherever you come in. It will be better if we are not disturbed either by the press or hecklers that evening, so please do not let the press know.

We we arrive in Jackson late Tuesday afternoon it will be time for supper and we can seek to have it then and there which will mean that the Jackson jailer would be

our host for the evening. I am trying to determine whether we could stay at a college campus that night if it seemed [fol. 334] advisable to await the next day for this appointment with destiny. I do not see any reason for not having our supper upon arrival, but I'll wait until my meeting Monday with CORE's lawyer to see what procedure would be best. If we stayed overnight we would have to purchase individual tickets the next day and be headed for an intended trip. . . . this would be more costly and less natural than simply going straight to the terminal. So, barring unforeseen factors, I believe we should have supper upon arriving in Jackson, but I've shared this little consideration with you and other observations of a lengthy nature so that you would see the situation as I do.

You will want to come with only one suitcase if possible. Attire enroute from New Orleans should be in clericals and throughout the pilgrimage. However, I suggest that you have one shirt and tie with you in case it's wanted. Bring your Prayer Book-Hymnal or small copies of each. For reading in the jail I suggest the P.B., your Bible, and other things you may want to meditate upon. There is no guarantee, however, that you can retain all of these in your immediate possession. Where several of you are coming from the same place, would you talk among yourselves and plan on one person bringing a compact communion kit, together with elements?

I am ordering sufficient copies of PART III of The 'Grey' Book for everyone. Entitled "The Kingdom, the Power and the Glory", I think this has several excellent litanies we may want to use, but if not used corporately I am sure you will [fol. 335] want to use, but if not used corporately I am sure you will find it helpful in personal devotions. Should you have something you think might be helpful to

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the group along these lines, bring it or consult with our Chaplain, the Rev. C. Kilmor Myers.



At Sewanee we will not stay at the Sewanee Inn, for they have said, after cancelling a reservation I made, that they are filled during the week of our tour. Because this is the opening week of school I am sure they will be filled and there was nothing I could do except make protest over their refusal to serve the two Negro priests mentioned previously. However, I have advised them that we will surely hope to have some of our meals there. Perhaps the University will see to the changing of the policy before we get there. We will probably stay in some university dormitory, which I have requested, or in faculty homes which have been offered. If any of you are driving to New Orleans, I do not think it would be out of order to go via Sewanee and have lunch at the Sewanee Inn. The University has its own police department which could remove you if you sat quietly at the counter awaiting service as countless students have done. I suggest that it would be well for some to stop—if they are driving and it's convenient—in the event that we might be forced to cancel our group visit there, and it would not matter if a few stopped in and the whole group came later.

In my next letter I shall send checks for the amounts you [fol. 336] have indicated will be needed to help get you to New Orleans. You can give me an accounting later and we will see what adjustments can be made if you spent appreciably more or less. Those reporting that their expenses would be covered otherwise are free to submit an accounting if other sources should not come through. However, I am figuring closely on the basis of what has been called for and will appreciate hearing if there is a revision in your asking.

I shall prepare a news release for September 3rd revealing final plans and giving the names of those to be involved. If you have strong objections to my releasing the names at that time, please let me hear from you. THE LIVING CHURCH will not be sending a man on the bus with us, but will cover us from other sources. Because we are not filled to capacity

I will be glad to receive requests from other press media who want to come along. Except for the names of participants you may share the information in this letter with people known to you, and especially be sure that the local Society group (if any) is kept informed and involved. One local group is planning a service of witness on the night of the 11th.

Other details: I am hoping that participants can be housed in Detroit without charge either in a parish house converted into a dormitory or in private homes. However, if you want other accommodations, you must contact the convention office at 33 E. Montcalm St., Detroit 1, Michigan. Time of arrival there is uncertain, but we should aim for [fol. 337] September 16th. . . . Should you need to telephone me before we meet in New Orleans my home number here is 255-0778. An additional line at the office is 525-2953. . . . I suggest you bring such money as you will (bring in Travelers Checks, and leave a record of the numbers at home as per their advice. . . . Don't be surprised if the arresting officers and others are quite civil and polite: It's a poor picture of the Northern image of the South when "riders" tell the press how pleasantly surprised they were. Be cordial, but resolute. When anger is expressed, return love.

Faithfully,

( ) John B. Morris

#### TENTATIVE LIST OF PARTICIPANTS

As of August 19th (Not alphabetical!)

The Rev. Gilbert S. Avery, III	Roxbury, Mass.
The Rev. Lee A. Belford	New York, N. Y.
The Rev. Myron B. Bloy, Jr.	Cambridge, Mass.
The Rev. Malcolm Boyd	Detroit, Mich.
The Rev. James P. Breeden	Boston, Mass.

The Rev. David H. Brooks	Tallahassee, Fla.
The Rev. Robert C. Chapman	Hempstead, N. Y.
The Rev. Joseph S. Dickson	Detroit, Mich.
The Rev. James W. Evans [fol. 338]	St. Clair, Mo.
The Rev. John M. Evans	Toledo, Ohio
The Rev. Quinland R. Gordon	Washington, D. C.
The Rev. James B. Guinan	Farmington, Mich.
The Rev. W. Robert Hampshire	Farmingdale, N. Y.
The Rev. Cornelius DeWitt Hastie	Boston, Mass.
The Rev. Gerald W. Humphrey	Beacon, N. Y.
The Rev. James G. Jones	Chicago, Ill.
The Rev. Jack Malpas	Baltimore, Md.
The Rev. John B. Morris	Atlanta, Ga.
The Rev. C. Kilmer Myers	New York, N. Y.
The Rev. Robert L. Pierson	Evanston, Ill.
The Rev. Robert P. Taylor	Chicago, Ill.
The Rev. Geoffrey S. Simpson	Pewaukee, Wis.
The Rev. William A. Wendt	Washington, D. C.
The Rev. Merrill Orne Young	Boston, Mass.
The Rev. Layton P. Zimmer	Swarthmore, Pa.
The Rev. Canon John Crocker, Jr.	Providence, R. I.

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Q. One last question with reference to this communication of August 19, 1961. Didn't you advise the applicants for this pilgrimage not to be surprised if the Jackson police were polite and not to comment on the fact that they were [fol. 339] treated politely by Jackson police?

A. I think I did.

Q. Now, don't you think it was rather strange to be advising the applicants for this type of pilgrimage that they were going to be treated politely by the Jackson police but to please don't say anything about being treated politely?

A. Do I think this strange to advise them this way?

Q. Yes.

A. Obviously not. I chose to do so.

Q. You didn't want publicity to go out that the Jackson police had done anything good?

A. Mr. Watkins, I'm a Southerner, and I know that Southern gentlemen can be awfully polite even when they are sticking a knife in you, as Northern gentlemen can too, and I know the devil can quote scripture, and I know it makes a good public impression to arrest people with a smile on your face and seem like you are preserving peace, when in point of fact you are unlawfully arresting them.

Q. Didn't you say, "Don't be surprised if the arresting officers and others are quite civil and polite: It's a poor picture of the Northern *imagine* of the South when 'riders' tell the press how pleasantly surprised they were."

[fol. 340] Now, you are telling members of your group, as prospective Riders, if you are treated politely by Jackson police, please don't say anything about it because this leaves a bad impression for us in the Northern press, aren't you?

A. I didn't say we were Riders. There had been some Freedom Riders that expressed surprise that we were gentlemen down here, and this frankly bothered me, as a Southern gentleman. Some of our Yankee friends have a feeling that we look like monsters, and I only wanted them to know that we don't look like monsters, and even though we may occasionally act in an unnecessary fashion, that we can do it politely.

Q. You didn't want it mentioned?

A. I was trying to warn them in advance if there were to be any confrontation with Southern police, don't be sur-



prised if they're polite. And Captain Ray is very polite. And—

Q. Weren't the others polite too?

A. Yes, they were polite too.

Q. Did you meet any impolite Jackson policeman while you were here?

A. Let's see. You mean— Well, we only met three who arrested us, and then we met personnel in the jail.

[fol. 341] Q. Were any of them impolite to you?

A. Yes.

Q. Who?

A. The man that took our fingerprints, I don't think was very polite.

Q. Any others?

A. I can only answer for myself. Maybe someone else had a different experience.

Q. I have handed you a communication from you to the applicants dated August 26, 1961, have I not?

A. August 26, 1961, right.

Q. In that communication you told them that complications had arisen because you had learned that \$2,000.00 appeal bonds were being required by Freedom Riders in Jackson, didn't you?

A. Yes, I did.

Q. You told them that you—that help had been offered you from other organizations in order, to raise the necessary bonds in Jackson, didn't you?

A. Necessary appeal bonds, should we need appeal bonds.

Q. And in this communication you refer— Let me read it.

"I have received tentative word from another organization that they could help with bond for between ten to [fol. 342] twelve men. They asked that I not identify them now, but it is a leading organization in the civil rights field."

Now, what organization was that?

Mr. Rachlin: I object to the question.

The Court: Overrule the objection.

A. My memory is a little vague. I think it was the Southern Christian Leadership Conference or the NAACP.

Q. Did that organization furnish bond assistance?

A. No.

Q. Continuing with your letter:

"Also there is a chance we might hope for some assistance from '281' but I'm sure it couldn't be in the figures we need."

What was "281"?

A. "281" is the National Council of the Episcopal Church, which was located then at 281 Park Avenue South, New York City.

Is that your question?

Q. Yes. Did you receive bond aid from that organization?

A. We received no direct funds from them. They acted as a channel for some of the contributions that were made which were sent to them and forwarded to us.

Q. Continuing with your letter, you state:

[fol.343] "If CORE secures adequate coverage from a bonding company they might be able to renew their offer."

Now, there, by CORE, you were talking about the Congress of Racial Equality, were you not?

A. That is correct.

Q. Did they furnish that bonding assistance?

A. They furnished no bonding assistance, and I don't believe it was ever possible for any person arrested on charges similar to ours to obtain assistance from a bonding company when cash bond was required at all times.

Q. In view of the increase in the amount of the bond required of Freedom Riders in Jackson, Mississippi, did that make you reconsider the number of your group that you thought ought to go to jail?

Mr. Rachlin: I object to the question. The witness has repeated himself time and time again that nobody in this

group wanted to go to jail or thought they ought to go to jail. I think the question is improper.

The Court: Sustain the objection to that.

Mr. Watkins: If it please Your Honor, just for the sake of the record, I want to point out that in numerous of the letters they have made the flat statement, "We want ten of our members to go to jail," without any qualifications whatever. I am going to read another statement in this letter to the same effect.

The Court: Read that quotation again. Or rather, let the court reporter read it back.

Mr. Watkins: May I refer back to the document?

The Court: Yes. I want to get the question. I thought it assumed something not in the record. That is the reason I sustained it.

(Last question was read by the court reporter)

The Court: Yes. I overrule the objection.

Mr. Rachlin: I thought you sustained it.

The Court: Yes, but since it is called to my attention some of the excerpts in the others, I remember that there was discussed how many wanted to go to jail or thought would go to jail—

Mr. Rachlin: That doesn't mean "ought to go to jail." It's an entirely different idea from saying that—. The question that Mr. Watkins propounded to the witness said, "Do you think they ought to go to jail?" "Ought to go to jail" is a different idea.

The Court: Get that quotation in the former document, Mr. Watkins.

Mr. Watkins: All right, sir. This is the exact language [fol. 345] of it, Your Honor. It's in the communication dated August 4, 1961.

The Court: Get the document itself.

Mr. Watkins: It's the last sentence in the first paragraph of the fourth page.

The Court: Read it.

Mr. Watkins: (Reading) "In the present context of things we will want to send at least ten of the pilgrimage participants to jail."

The Court: Overrule the objection.

Mr. Rachlin: One second. I think the witness has explained the words "in the present context of things." Now—

The Court: I overrule the objection.

Q. Now, Mr. Morris, bearing in mind you wrote these letters and I didn't— You remember that?

A. Yes, indeed, and I gave them to you.

Q. Yes, sir, at the Court's instruction.

A. At your request.

Mr. Rachlin: —I'm sorry. There—

The Court: —Very well, Gentlemen. Right now. Expound your next question.

Mr. Watkins: Yes, sir.

[fol. 346] Mr. Rachlin: Well, I think the comment "on the Court's instructions" is actually untrue. I volunteered. At Mr. Watkins' request, I had these—

The Court: The record shows for itself. I don't care to go any further, Gentlemen.

Repeat the question and let him answer.

Q. I'd like to ask you if this sentence does not appear in the letter of August 26, 1961:

"There are many possibilities, but at the present it looks like it may be the better part of valor to consign only a dozen men to jail."

Now, is that your language?

A. That is. May I explain it?

Q. I think the language speaks for itself. Do you think it needs explaining?

A. To you, yes.

The Court: I will let him explain.

Q. Explain it, then. What do you mean by the word "consign"?



A. We were a group of 28 soldiers entrenched facing the enemy, and someone must go out. Certainly not desiring to be shot or killed or even desiring to go out. Then you will consign—the group will decide and consign how many it has and has to go out of the trench, out of the place of [fol. 347] protection, to meet the enemy. We made a conscious choice at the time we were at Tougaloo College who would go to Chattanooga and thence to the church schools there by means of public conveyance, having lunch as we hoped to have it, hoping and desiring that we would not be shot down by the enemy coming out of Tougaloo then with our tickets and ready to go, having no hope for arrest, but not spurning what we felt was the necessary witness to Christ of being undivided racially. We also wished that the pilgrimage itself, which spoke to the church primarily, should not be destroyed by those who would possibly deter the Chattanooga group, so that a portion of our group was protected, as it were, from meeting the enemy. This was a strategic consideration where you don't send all of your forces out at one time.

Q. Then this was a military operation?

A. Christians are known, in their better days, for being soldiers of Christ. When we are baptized into Christ we are called to be such.

Q. Who made the decision as to how many men you would consign to jail?

A. Of course, we didn't consign them. Your authorities here consigned them. This is a form of reference here in a [fol. 348] private communication to a group of men that catches up within the word and its meaning a realization of the possibilities. In the context of all of these documents there is hope and prayer that it would not be so. The group itself decided who would comprise the various parts of our pilgrimage.

Q. In your explanation you made several references to the enemy. About whom were you talking?

A. Sin, and those who practice it and maintain it, which includes all of us, but sometimes in certain areas of society

and communities and in the church it is more vicious and difficult to deal with. The enemy of sin in the world; the devil, if you want. You want me to read from the prayer book and describe this?

Q. No, sir, that is enough.

Mr. Rachlin: I think it might be very interesting. I think the witness might be allowed to, Your Honor.

The Court: Very well.

Mr. Rachlin: Please do it, Mr. Morris, right this minute.

A. When we are baptized into Christ's church—

Mr. Rachlin: Tell us what you are reading from.

A. I am reading from the Book of Common Prayer, [fol. 349] the service of Holy Baptism, the occasion where persons in all parts of Christ's church, whatever denomination, in baptism are made members of Christ, and part of the body of Christ, the Church. After a person has been baptized with water and the remission of his sins so signified, then, in our church, at least, he is signed on his forehead with a cross and the water, and the minister says this: "We receive this child, or this person into the congregation of Christ's flock and do sign him with the sign of the cross in token that hereafter he shall not be ashamed to confess the faith of Christ crucified and manfully to fight under his banner against Sin, the World, and the Devil, and to continue Christ's faithful soldier and servant unto his life's end."

If this sounds like a military operation, so be it.

The Court: Have you finished?

The Witness: Yes, sir.

The Court: Very well, Mr. Watkins, proceed.

Mr. Watkins: We offer in evidence the communication of August 26, 1961.

The Court: Has counsel opposite seen it?

(Counsel hands to counsel opposite)

Mr. Rachlin: Same objection.

[fol. 350] The Court: Let the objection be overruled and the document received in evidence and marked as an exhibit.

(Same received in evidence and marked as Defendant's Exhibit No. 8, which Exhibit follows here below:)

EXHIBIT DEFENDANT'S #8

WITNESS MORRIS

May 15 1963

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY  
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia  
Jackson 5-7975

August 26, 1961

TO PILGRIMAGE APPLICANTS:

Since my letter of August 19th and the listing of 26 men as of that date I have heard from several other prospective participants. The Rev. Morris Samuel of Long Beach, California, is a definite applicant. Three men have tentatively asked to be included, although in each case there are circumstances which may prevent their coming even if we can include them. They are: The Rev. Powell Woodward of Cincinnati, Ohio; the Rev. Andrew Jensen of Fitchburg, Mass.; and the Rev. James E. Woodruff of Chicago, Ill. If you know just cause why any of these should not be added to the group, speak now! Keep up your efforts to enlist others for we can accomodate 35 and there is always a possibility of drop-outs due to unforeseen circumstances.

Enclosed is an exchange of correspondence with All Saints' College in Vicksburg, Mississippi. Because my de-[fol. 351] cision and response regarding this involves you, I am sure you will want to see these letters. Pardon any typographical errors. Also enclosed are the enclosures I sent the Rev. Mr. Allin. His letter to me should be treated

confidentially, and, if you should differ with him, please don't write him critically. If you differ with my reply—stated or implied—by all means let me have your frank reactions. We shall probably receive other appeals similar to this asking us to cancel plans.

Complications have arisen regarding bail assistance from CORE. The appeal bond for each convicted rider in Jackson has been set at \$2,000.00 and they have had to withdraw their offer of assistance on the initial bond of \$500.00 which each person arrested in September would have to post if he wanted out. This also means that we could anticipate the need of the same two thousand dollars for every man arrested when trials come up next spring. The CORE lawyer is confident he will win the case, but it may take a year and a half. Locating \$2,000.00 per man for thirty men would be difficult.

I have received tentative word from another organization that they could help with bond for between ten to twelve men. They asked that I not identify them now, but it is a leading organization in the civil rights field. Also, there is a chance we might hope for some assistance from "281" but I'm sure it couldn't be in the figures we need. If CORE secures adequate coverage from a bonding company they might be able to renew their offer. We can expect [fol. 352] some contributions from concerned churchmen which might be sufficient to sustain an arrangement we could make directly with a bonding company. There are many possibilities, but at the present it looks like it may be the better part of valor to consign only a dozen men to jail. The picture could change. Some may want to stay in jail or await help from the Church back home. I will simply go to New Orleans armed with information about what I know is available.

I will be writing again within the week probably and will send checks as per your stated needs for travel.

Faithfully,

(Rev.) John B. Morris



The Court: Gentlemen of the jury, under the same instructions I gave you yesterday, I will let you separate again and be back at 1:30.

(Whereupon the court was recessed until 1:30 P.M.)

### After Recess

(Mr. Watkins continues:)

Q. Reverend Morris, I hand you your letter of September 2, 1961, to the pilgrimage participants, and I ask you if that is not a true copy of the document.

A. This is my letter.

[fol. 353] Q. In this letter you advise the group that arrangements had been made for the group to spend the night of September 11, 1961, at the Colored YMCA in New Orleans? Is that correct?

A. The Dryades Street YMCA is the Negro YMCA.

Mr. Watkins: We offer this letter.

Mr. Rachlin: He has shown it to me, and I make the same objection.

The Court: The objection is overruled. Let the document be received in evidence.

(Same received in evidence and marked as Defendant's Exhibit No. 9, which Exhibit follows here below:)

### EXHIBIT DEFENDANT'S #9

WITNESS MORRIS

MAY 15 1963

THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY  
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia  
Jackson 5-7975

September 2, 1961

TO PILGRIMAGE PARTICIPANTS:

This may be my last letter before we meet in New Orleans. As of now we have 27 definite participants and 2 men who

are tentative. I will receive collect calls from any men that you believe should go to seek to fill/our ranks.

If you asked for all or a part of the available \$75.00 to help get to New Orleans, a check is enclosed. After the pilgrimage is over, I shall ask all participants to advise me of just how much money they personally have had to [fol. 354] expend and what their general need is and we will see if any remaining funds can be fairly distributed.

The two enclosures speak for themselves. I wrote letters similiar to the one here to Birmingham clergy to Jackson clergy in hopes that we might have a conference together. I have heard nothing from Jackson yet. An acceptance from there would suggest that we spend the night at Tougaloo Southern Christian College, the campus which will accomodate us if we want.

In New Orleans we will meet and stay at the *Dryades Street YMCA, 2222 Dryades Street, New Orleans 13, La.* Supper will be served at 6:30 P.M. on Monday, September 11th. Please try to get there in advance of that hour. From the airport I imagine the limousine in to the downtown section would be advised, and then, walk or take a taxi to the YMCA. This is the Negro YMCA in New Orleans. Our accomodations, with rented cots, etc., will not be elegant but I believe it will be adequate. The phone number is: 523-7392. The director is Mr. Harris. We will also have breakfast there the next morning and they will fix box lunches to take with us on the bus on Tuesday for the meal before Vicksburg.

You will want to leave this information at home in the event your family should need to contact you. In the event of need in Jackson I believe the Rev. Ed Harrison would be helpful. In Birmingham the Rev. Louis Mitchell or the Rev. Josiah Ware would be men who would extend some [fol. 355] help in relaying any emergency messages. Of course, you can call home at intervals if you want. These names are of men I've not consulted with regarding mentioning them to you. Of the clergy they are simply the ones I would call if I had need.

I have not yet issued a release on final plans and may not. At this point it seems best not to reveal the points on our itinerary in advance. . . . except that Sewanee and Dearborn have been well publicized. Possibly I may simply prepare a carefully worded statement suggesting the nature of our venture and let it go out with a list of participants.

More later if necessary, but my previous letters have covered most points, I believe. I commend you for your steadfastness and I look forward to seeing you in New Orleans.

Faithfully,

/s/ J. MORRIS  
John B. Morris

Q. Three days later on September 5, 1961, you wrote the applicants another letter, didn't you?

A. I did.

Q. And that is the letter you have in your hand?

A. Yes. I haven't finished looking it over. •

Q. I beg your pardon.

In that letter you warned the group that the situation was [fol. 356] tense in New Orleans at that time, didn't you?

A. I did.

Mr. Rachlin: This is getting far afield. Are we also involved in situations in New Orleans?

The Court: Are you objecting?

Mr. Rachlin: I am objecting.

The Court: Overrule the objection.

Q. You suggested to them in that letter, in view of the tense situation existing in New Orleans, that the group be very careful not to attract any particular attention?

A. I did.

Q. You actually told them that if they arrived in a body, to go to the YMCA separately, to separate and go as individuals, didn't you?

A. I think I did, yes.

Q. Why were you being so careful with the tense situation in New Orleans? Was that not the place where you desired your companions to go to jail?

A. The people of New Orleans were endeavoring to implement a Federal Court ruling regarding school desegregation, and we had a great deal of respect for the community's need then to do this without other issues disturbing them.

Q. And you realized that your group could disturb them? [fol. 357] A. Interracial group in the South can always disturb, at least in these times, some of the white people. Not many, but some.

Q. You were considerate of the tenseness of the situation in New Orleans. Were you as equally considerate of the tenseness of the situation in Jackson, which was confronted with the Freedom Rider invasion?

A. We did not know that you were endeavoring to follow the Federal Court orders, as the people in New Orleans were.

Q. As I understand your answer, you were considerate of New Orleans because you thought New Orleans was a legal town, and you were not considerate of Jackson because you did not think we were a legal town. Is that right?

A. I didn't say that.

Q. In that letter you also advised the applicants that you had been in touch with Dr. Beittel, President of Tougaloo, and made arrangements for your group to spend the night of September 12th at Tougaloo?

A. I think they call it Tougaloo. We had been in touch with him.

Q. Well, I'll pronounce it any way you wish. You had advised them that they would spend the night of September 12th at Tougaloo, and you gave them Dr. Beittel's telephone number in case you needed to get in touch with them there, [fol. 358] didn't you?

A. Yes, I did.



Mr. Watkins: We offer in evidence the letter of September 5, 1961.

Mr. Rachlin: Same objection.

The Court: Overrule the objection. Let it be received in evidence and marked as an exhibit.

(Same received in evidence and marked as Defendant's Exhibit No. 10, which Exhibit follows here below:)

**EXHIBIT DEFENDANT'S #10**

**WITNESS MORRIS**

**MAY 15 1963**

**THE EPISCOPAL SOCIETY FOR CULTURAL AND RACIAL UNITY  
Room 200, 5 Forsyth Street, N.W., Atlanta 3, Georgia  
Jackson 5-7975**

**TO PILGRIMAGE PARTICIPANTS:**

Still another letter before we depart for New Orleans! You will be glad to know that today we added the Rev. Robert Fortna of New York City to our number and I am sure you will share my great regret at hearing from our intended Chaplain, the Rev. C. Kilmer Myers, that he will be unable to accompany us. His telegram said only that he could not come and would explain why in a subsequent letter. He had forewarned me in July that there was an outside chance a new child they are adopting would arrive at just this time. I know that he would encourage us onward and that his prayers will go with us although he cannot [fol. 359] come.

Let me repeat—we are to be at the Dryades Street YMCA, 2222 Dryades Street, New Orleans 13, La., by 6:30 P.M. on Monday, September 11th. Because of the tension in New Orleans connected with the opening of school this week I would suggest that you go quickly and quietly to the YMCA and avoid any challenge to anything should something arise. I was called today by CORE and advised that the mayor of New Orleans has announced a very firm

policy with regard to persons on either side of the issue. Even if there were no provocation on our part it would serve to our disadvantage to be called in question as likely disturbers of the peace when they are trying to open their schools on a desegregated basis. If you arrive in a group it would be well to disperse en route to the YMCA, but use your best judgement.

I should have submitted the enclosed to you sooner but my determination to prepare such a draft has grown out of my decision not to issue a final release on plans nor reveal names or itinerary in advance. Also, I felt we needed something comprehensive as possible in interpretation of our entire plan. Please examine it carefully. . . . if I receive no collect phone calls or telegrams in strong objection to all or a part of this statement I shall send it on Saturday to all bishops and to limited press media as a *draft* of what the group will consider for adoption on Monday night as our message to General Convention. If anyone calls me on it I shall not send it out as the suggested draft but we will [fol. 360] weigh it Monday evening.

At this point I would suggest that we stay over Tuesday night in Jackson before attempting departure the next day to Birmingham. The *p one* number of Tougaloo Southern Christian College is EM 6-3425. I have been in contact with Dr. A. D. Beittel, the President, whose phone is EM 6-8242. You can give the numbers to your family as where you could possibly be contacted on Tuesday night.

My records indicate that we will have 27 men in the group with the possibility of one more I am listing as tentative. The right men can be accepted until the last minute if space remains.

Faithfully,

/s/ J. MORRIS

John B. Morris

Q. The organization ESCRU, of which you are executive director, is not an official organization and/or part of the Episcopal Church, is it?

Mr. Rachlin: Objection. I don't see the relevancy of the question.

The Court: Overrule the objection.

A. It is not an official organization of the Episcopal Church. It is an organization within the Episcopal Church. I can explain what this means, if you want.

[fol. 361] Q. It has no authority to speak for the Episcopal Church, does it?

A. It has no authority to speak for the Episcopal Church. That is right.

Q. Was your counsel, Mr. Rachlin, at Tougaloo Tuesday night, September 12, 1961?

Mr. Rachlin: Your Honor, at this point may I request that you advise Mr. Morris if he wants to that he may choose to exercise—

The Court: Yes. I give you the same advice. If Mr. Rachlin was your attorney, you can claim privilege and refuse to answer it on that ground. It is up to you to decide whether you want to claim the privilege or want to answer the question.

The Witness: Thank you, Your Honor. I can answer the question without difficulty.

A. He was not with us at Tougaloo that evening.

Q. Did you confer with him in Jackson or at any place on either September 12th or September 13th?

A. No, I did not confer with him on September 12th or 13th. He was in New York then. I don't know where. He was not here.

Q. I believe you have stated in your deposition a number of times and probably on this trial that your group which [fol. 362] went to the Trailways Bus station were 15 in number?

A. That is correct.

Q. Actually, they were 17 in number, were they not, including Reverend Boyd and Reverend Zimmer, who went there as observers?

A. We discussed this in part. Our group was 15 in number, and this division of our number, as we discussed earlier, Fathers Boyd and Zimmer were present in the terminal and we have one of them here as a witness that will be called later.

Q. His presence, those two men's presence in the terminal, was by prearrangement, and you knew they were to be present, didn't you?

A. I knew they were to be present. That's right.

Q. You knew there were to be 17 members of the Episcopal clergy in your group in the terminal at the time, didn't you?

A. I did.

Mr. Watkins: That is all.

Redirect examination.

By Mr. Rachlin:

Q. Now, Reverend Morris, Mr. Watkins has submitted in evidence Exhibit 7, and I call your attention to Page 3, beginning on the end of the fourth line. I ask you to look [fol. 363] it over and read the sentence out loud and explain the meaning of it.

A. Page 3?

Q. Line 4, beginning here near the end of the line.

Mr. Rachlin: May I point it out, Your Honor?

The Court: Yes, sir.

Q. Beginning "Let me. ." Read that to yourself and then read it out loud and explain the meaning.

A. I said in this letter to those who were to go on the pilgrimage, "Let me remind you, however, of the possibility that the ICC might rule favorably before the time of our



journey and I sincerely hope they will. I think that we should hope for the changes that mean no jail—not because we aren't prepared to go, but so that the barrier might simply fall for the benefit of everyone."

Q. With reference particularly to the words concerning "no jail," I wish you would explain that in light of the questions of Mr. Watkins asking you this morning about the desire to go to jail.

A. We had no desire to go to jail. We felt the call in this religious pilgrimage to a commitment that involved a journey where the possibilities of jail were always present in the South, but we hoped and prayed they would not develop so that we would be taken to jail. We had an [fol. 364] itinerary, a purpose, and a message to our church, and a destination in Detroit, and the witness is significant, the message we prepared in New Orleans, it was all there and of substance and validity in its own right, and did not require jail; and as said in the message that we drafted in New Orleans, we were priests of the Church of God in this particular expression of it, the Episcopal Church, and we felt it to be disobedient to Christ to be separated by race as we went in any point in the course of this pilgrimage, and therefore we would not separate by race. We were prepared to be supportive of the Freedom Riders by in no wise adjusting our group pattern to the community, to the mores of the community, region, any more than the Freedom Riders did, so at one point then we risked the same possibilities of arrest that Freedom Riders may have risked, but we said here that we hoped that even this late—because we were arrested some several weeks—I don't know how long, but some time after any Freedom Riders were arrested. We were arrested in September, and we hoped all the while that the ICC might hand down a ruling, which it did hand down, I think, ten days after we were arrested but not in time to avert our arrest. Of course, [fol. 365] it wasn't known it would be handed down.

This is repetition of what I said earlier, but we had no desire to be arrested.

Q. Then I take it your objective in coming to Jackson was not to go to jail. Is that correct?

A. That's correct.

Q. Was Jackson the end point of your trip?

A. No, it was not.

Q. Was it ever at any time the end point of your journey?

A. No. The general convention of the Episcopal Church was the announced and intended destination in Detroit from the beginning.

Q. Did you and your organization, which has been referred to, have an exhibit ready to be opened and displayed in the convention hall at Detroit?

A. We had a large placard showing a figure of Christ on the cross with His body bisected through by barbed wire upon which is emblazoned the words "Segregation and Separation," and this said in symbolic terms what we feel the issue to be, within the church especially; and on the other side of the placard there was a picture of our Lord with two persons kneeling in harmony and holiness before Him in a harmonious state, and this said something about, [fol. 366] symbolically, our hope for the church where segregation and separation would not play a part. This was our message. Symbolically we prepared our message in words in New Orleans, and this was our destination.

Q. Now, many questions have been asked you about the Episcopal Society for Cultural and Racial Unity, but I regret not having heard a question about what it stands for. I wonder if you could tell us briefly what it stands for, particularly, you as a born and bred southerner.

A. The Episcopal Society for Cultural and Racial Unity is a group of Episcopalians, bishops, clergy, lay persons, endeavoring within part of Christ's church, the Episcopal Church that we are placed in, to be a little more honest, a little more true to the commitments we have made and believe God asks of us, and those commitments, we believe,

compel us to disregard color in the treatment of persons within the church and within the community. We believe it to be unjust, unlawful in terms of the eyes of the Federal Government, immoral in the eyes of God, and disobedient before Christ, and we formed this organization and formed it within this denomination to try to provide some leadership within the Episcopal Church for a greater commitment to these teachings and values. We are concerned for [fol. 367] these things *inthe* theological and religious context. We believe we have been hearing too much of only court orders and rulings, and while we are respectful of the majesty of the Federal judiciary we believe that for Christians there is a deeper reason for being concerned for desegregation. This reason, we believe, is a religious one, a theological one, and we are trying to speak the word and provide some leadership within the church that will take people to the deeper concerns that are caught up in our baptismal vows, as I read earlier. And we are then trying to work in this way within the Episcopal Church north and south, and while our office is in Atlanta, we by no means have any feeling that the problem is limited to the South; we know they are just as grievous in the North and the church too in the North. Indeed, as a southerner, I have some feeling that ultimately we will work these problems through more adequately in the South than in the big cities of the North. But to point out that there are problems in the North is no reason for not dealing with our problems down here. Our concern though is a religious one, primarily, as is evidenced in the itinerary of our pilgrimage.

Q. Now, Mr. Morris, Mr. Watkins asked you a moment [fol. 368] ago whether your organization is an official organ of the Episcopal Church. May I ask this: Is there anything inconsistent about the position of your organization, the Episcopal Society for Cultural and Racial Unity, which is inconsistent with or in opposition to the teachings of the Episcopal Church of the United States?

Mr. Watkins: We object to that, Your Honor. He has already said that his organization was not authorized to speak for the Episcopal Church. So how can he now speak for the church by adopting the things for which his organization stands?

The Court: I'll overrule the objection if he knows.

A. We do not—

Q. Did you get the question?

A. I did. We do not presume to speak for the Episcopal Church. We speak for some Episcopalians, and within the church and as active churchmen, and we do not believe that we have anything new to say about Christ's will and teaching regarding human relations and love one for another.

We only believe that we are saying again and again what the church's position is, and indeed, and in fact a study of the resolutions and pronouncements of the Episcopal Church officially will bear this out, I believe, that we have [fol. 369] not said anything new; we are just saying it again and again that we might not forget it, might not leave it up there to admire. We are an unofficial group like a great many other groups within the Episcopal Church and within every church, which are groups of churchmen who are gathered together for a particular concern. We have in the Episcopal Church other such groups that have their concerns that are all valid and necessary. The Overseas Missions Society is a group that deals with overseas missions. We deal with cultural and racial unity, which in our mind means harmony and wholeness—not uniformity, but all that I said a moment ago about our basic purposes. We are not official, and yet we are increasingly reflecting the sentiments of a great many Episcopalians. Witness the fact that of our 125 or so bishops, some 30 or 40 *aremembers*, of our 8,000 or so clergy, some over 900 are members, and then many lay members.

So we do not speak for the Episcopal Church, but we speak for some Episcopalians.



Q. Now, a-moment ago Mr. Watkins returned to me one of the documents that Judge Mize said might be competent if it were offered.

[fol. 370] I am going to ask you to—This document apparently bears the date at the bottom 9/18/61, and it's entitled "Statement by Rev. V. Powell Woodward For Fifteen Episcopal Ministers."

In view of what Judge said earlier, I wonder if you would take the trouble, Mr. Morris, to read this statement aloud.

Mr. Watkins: If it please the Court, I am going to object to that statement. I didn't use it for reasons that it is a statement of a person who is not present. I don't think Mr. Rachlin has the right to use it for the same reason.

The Court: Let me see it again.

Mr. Watkins: In addition, it is a statement made after the occurrence.

The Witness: May I comment on it?

The Court: Let me see it first.

(Same is handed to Court)

The Court: Sustain the objection.

Mr. Rachlin: May I make an offer of proof?

The Court: Yes, I am going to let it be marked but excluded. I will give my reasons for it, but I am not going to give all. The only reason I thought it would be competent [fol. 371] if counsel opposite desired to use it would be that there is a statement in there which I construed to be a statement against interest, and he could have introduced it; but everything else there is self-serving, and you know, as a lawyer, that every self-serving declaration is not competent in behalf of the fellow making the statement. So I will let the court reporter mark it, and sustain the objection so it will become a part of the record.

Mr. Rachlin: May I make an offer of proof and ask the witness to read it?

The Court: No, sir. You have your record complete on it now, and it's not permissible for you to let him read it.

Let the reporter mark it.

(Same was marked as Plaintiff's Exhibit No. 3, which Exhibit follows here below:)

**EXHIBIT PLAINTIFF'S #3**

**WITNESS MORRIS  
May 15 1963**

**STATEMENT BY REV. V. POWELL WOODWARD  
FOR FIFTEEN EPISCOPAL MINISTERS**

We now continue on our way to the General Convention of the Episcopal Church in Detroit. Two of our members will remain in jail for a time.

[fol. 371a] We intend to appeal to the United States Supreme Court, if necessary, to obtain justice. We believe that our counsel showed conclusively that there is no evidence to support our conviction by the City of Jackson on a breach-of-peace charge. We hope that Governor Barnett will take this time, proclaimed to be "Constitution Week" by President Kennedy, to consider how his authorities have repeatedly ignored the Constitutional rights of peaceable racially-mixed groups such as ours.

We do not believe that Judge James Spencer is competent to find us guilty of violating Episcopal Church law. His venture into canon law obscured the criminal issue and endangered our American heritage of separating Church and State. We hope that he has now noted Thursday's statement by our Presiding Bishop, the Rt. Rev. Arthur Lichtenberger. The bishop praised our action is "an attempt to bear witness . . . to the whole country what the position of the Episcopal Church is."

• • • • •

[fol. 371b]

## PRAYER FOR COURTS OF JUSTICE

"Almighty God, who sittest in the throne judging right; we humbly beseech Thee to bless the courts of justice and the magistrates in all this land; and give unto them the spirit of wisdom and understanding, that they may discern the truth, and impartially administer the law in the fear of Thee alone; through him who shall come to be our Judge, Thy Son, our Saviour Jesus Christ." Amen.

Book of Common Prayer, pp. 35-36.

9:18:61

Mr. Rachlin: There is one thing I do want to say. Your Honor earlier today referred to res gestae, and this document is part of the res gestae.

The Court: Oh, no. This is made after all this. Res gestae is something that occurs there on the spur of the moment. I adhere to my ruling. It is a part of the record now.

Q. Now, Mr. Morris, a term has been used during the course of your cross examination and that of Father Jones [fol. 372] yesterday about non-violence.

I wonder if you would explain to us what that term means?

A. I'm not sure I'm an authority on the subject of non-violence in its classical or technical sense as it's considered to be a concept from Ghandi, in present day terms. Dr. Martin Luther King is one of our foremost scholars of Ghandi, in perspective, but I know as a Christian that one, under obedience to God in Christ,—that I am compelled to be, so much as life in me, non-violent in my relationships with other people, to realize that sin in all of us will prompt us to be violent, to be selfish and self-centered, and that through Christ we might control this and be non-violent. But in more practical terms in the area of witness or pro-

test, it means plainly that if somebody hits you, you don't hit back; and in our terms in our pilgrimage, it meant that we are to be under the discipline as Christians and in any way you look at it not to retaliate in any way or any wise.

Q. So under no circumstances, even if force were used against you, would you use force? Is that correct?

A. We would hope to be so commanded by Christ at that point not to.

[fol. 373] Q. And when you were in the bus station on September 13, 1961, did you obey this belief, Christian belief, of non-violence?

A. There was no violence that tested our metal in that regard.

Q. There was no violence on anybody's part? Is that correct?

A. That is correct.

Q. Was there the threat of violence?

A. No.

Mr. Rachlin: No further questions.

The Court: You may stand aside.

(Witness excused)

[fol. 374]

ROBERT L. PIERSON, called as a witness in his own behalf and having been duly sworn, testified as follows:

Direct examination.

By Mr. Rachlin:

Q. Father Pierson, will you tell us where you live, please?

A. White Plains, New York.

Q. And give your exact residence.

A. Nine Oakley Road, White Plains, New York.

Q. With whom do you live?

A. My wife and four children.

Q. Four children?



A. Yes.

Q. Give us a little of your educational background?

A. The usual public schools, public school training—grade school, high school—and a short time at Lawrence College before I *servic* in the Air Force. Finished college at the University of Wisconsin, and went to Garrett Biblical Institute for a very short time, and finished seminary at Nashotah House, Nashotah, Wisconsin.

Q. When did the time come when you were ordained as a priest of the Episcopal Church?

A. 1954.

Q. And you have been a priest of the church ever since?

[fol. 375] A. Right.

Q. Now, were you in the City of Jackson, Mississippi, on September 13, 1961?

A. Yes.

Q. On the morning of September 13, 1961, did your business carry you to the Continental Trailways bus station near this courtroom?

A. Yes, it did.

Q. Do you recall approximately what time it was that you arrived at the bus station?

A. About 11:25.

Q. Were you accompanied by others?

A. Yes.

Q. How many others were there with you?

A. There were a group of 15 of us.

Q. About how far from the entrance to the bus station did your taxicab stop to let you off?

A. About 50 or 60 feet, 60 or 65 feet.

Q. Did all of you proceed then forthwith to walk to the bus station, into the entrance to the bus station?

A. Yes.

Q. Approximately how long did that take?

A. I would say not more than a half a minute, 30 or 45 seconds.

[fol. 376] Q. Now, while you walked from the taxicab to the entrance to the bus station, did you observe any large number of people follow you and your fellow priests?

A. No, we did not.

Q. Did there come a moment when you entered into the bus station?

A. I'm sorry?

Q. Did you venture into the bus station?

A. Yes.

Q. Will you describe then what happened as you walked after you walked into the bus station.

A. We went in in single file and stretching out almost the length of the distance from the entrance to the lunch counter entrance; I believe four or five or six of the men got into the lunch counter and were told to hold it up there, to come on back out.

Q. Do you recall who said that?

A. One of the officers. I can't remember which one.

Q. Was it one of the two gentlemen? Indicating Officers Griffith and Nichols to my right.

A. Either Officer Griffith or Officer Nichols.

Q. Did you observe both of them there at that moment?

A. Yes, I did.

Q. When did you first see them after you entered the bus station?

[fol. 377] Do you recall?

A. One was right at the entrance. Both may have been at the entrance; one—

Q. Don't speculate. Just what you saw and observed and heard.

A. All right. One was right at the entrance and one was at the entrance to the lunch counter. Now, I'm not speculating; I'm just saying that one may have moved from the entrance of the terminal to the entrance to the lunch counter as he saw us move.

Q. Now, as the 15 of you entered, did you enter toward the rear of this group or were you toward the front?

A. I was about two-thirds of the way back.

Q. So that approximately ten had entered previous to you? Is that right?

A. Right.

Q. Will you describe what happened after one of the officers said something?

A. One said, "Hold it up there, right there," and he said, "Go on back out" to those who had gone into the lunch counter, and told us that we would be—asked us to move on, I believe was the next thing.

Q. When he spoke to you, which direction were you facing?

A. Facing toward the lunch counter, but I can't say what [fol. 378] direction that is.

Q. Did you observe any substantial number of people following you into the bus station?

A. No, no one followed us in except there may have been one or two getting out of taxicabs just about the same time we did, but no extraordinary group.

Q. Now, at the time that one of the officers spoke, did you hear any unusual hubbub in the station?

A. No, sir.

Q. Did you see any unusual hubbub in the station?

A. No, sir.

Q. Did any person in the station say anything of a threatening nature to you or any of your fellow priests?

A. No, sir.

Q. Did any person in the station make any threatening gesture to you or your fellow priests, so far as you know?

A. No.

Q. When you walked in, did you observe the demeanor of your fellow priests as they entered into the station?

A. Yes.

Q. Will you describe it?

A. Was perfectly orderly.

Q. Did they make any unusual noises?

[fol. 379] A. Unusual in the—

Q. —Loud voices?

A. No.

Q. Did they make any threatening gestures to anybody?

A. No.

Q. Now, would you proceed and pick up from the point where the officer called the people who entered into the restaurant back. What happened thereafter?

A. He was telling us to move on, and we told him that we wanted to get lunch, and he said again, "I'm telling you to move on." We said we were interstate *travellers*; we had tickets to Chattanooga. He said again to move on, and we once again offered a statement of our situation in hopes that we might have some communication with the police officer regarding our circumstances, but he simply said after the third time—after having told us to move on three times, he placed us under arrest.

Q. Now, where were you going, or what was your business in and around the vicinity of Chattanooga?

A. Around the vicinity of Chattanooga, we had plans to visit several church schools in that general area of Chattanooga.

Q. Chattanooga, of course, is in Tennessee?

A. Yes.

[fol. 380] Q. Do you recall which officer it was who said you were under arrest?

A. No, sir.

Q. Was it one of the two officers who are defendants here in this case?

A. It was one of the two.

Q. What happened thereafter?

A. After having been placed under arrest, we remained in our places, said a couple of prayers. By that time, by the time we had finished with this, Captain Ray, then Captain Ray, now Chief Ray, had come to the terminal.

Q. Now, during this period from the moment you were placed under arrest and until the moment then Captain Ray



entered the station, did anybody in the station indicate any hostility towards you priests?

A. No.

Q. Did anybody say anything of a hostile nature?

A. No.

Q. Did crowds gather in a hostile manner inside the station?

A. No.

Q. Did you happen to see Captain Ray enter the station?

A. No, I didn't.

Q. When did you first see him?

[fol. 381] A. It was as though he had come from a side door and was standing right before us. I don't recall having seen him until he was right before us. I may have been looking the other way too.

Q. Did he speak to either of the other two officers who were there?

A. I don't recall.

Q. Did they speak to him?

A. I don't know.

Q. Did you see whether he spoke to them?

A. I did not see.

Q. You were looking at him, weren't you?

A. As I say, I may have been looking the other way. He appeared very suddenly, actually.

Q. What did he say to you?

A. I believe his words were, "I am going to see that you get on the bus. If you come with me there will be no trouble," or some such thing. That was the substance of what he said.

Q. What did you say?

A. We said once again what we had said to the arresting officer, that we were interstate travelers and that we had come to get a sandwich, something to eat, before starting on this journey to Chattanooga, and we wanted lunch.

[fol. 382] And he said again that he would—there was some discussion at this point—we were interstate travelers

and wanted to get on the bus and wanted to have our lunch first, and he said again, a second time, that he would see that we got on the bus safely if we would come with him.

Again we said we wanted lunch. Then he repeated more or less what the first arresting officer had said, "Move on," and having said that three times, he placed us under arrest, the second time.

Q. Did he take you anywhere?

A. We stayed there until the wagon had been called for. We went out behind the bus terminal into a loading zone, waited for the patrol wagon to come; we were loaded into the patrol wagon and taken to the city jail.

Q. Was there any unusual number of people out back there were the buses loaded?

A. There was a group there; however, I would not say it was a sizeable group, having been in the bus terminal yesterday at almost exactly the same time that we were there September, 1961. Yesterday I counted 28 people inside the terminal and maybe half that many outside, and I would say there was about that many that day.

[fol. 383] Q. There was nothing unusual in the appearance on September, 1961?

A. No.

Q. Did you eventually go into the paddy wagon?

A. Yes.

Q. You were escorted into it?

A. Escorted in a sense. The back entrance was indicated to us.

Q. Where were you taken?

A. To the city jail.

Q. By the way, was the back entrance locked or was it open? Were you free to go?

A. Into the paddy wagon?

Q. Out of the paddy wagon. Were you free to leave the paddy wagon, or was it locked?

A. I don't know.

Q. You didn't try the door?

A. I didn't try the door.

Q. Then you were taken to the jail?

A. Right.

Q. What happened to you when you got to the jail?

A. Taken upstairs on the elevator and sent to a conference room and brought in one by one to be booked and have our personal belongings, valuables, taken and checked, pre-[fol. 384] sumably for safekeeping. Then we were fingerprinted, and we had those photographs taken with numbers underneath to identify us.

Q. Have you ever received those photographs back?

A. No, I haven't.

Q. Have you ever received your fingerprints back?

A. No, sir.

Q. Now, after this was done, what happened?

A. We were then allowed to make a phone call and sent up to our cells, to the cells which had been assigned to us.

Q. Do you recall how long you were in the jail before you had a trial in Judge Spencer's Court?

A. We went to jail Wednesday about noon, and we were tried Friday about ten o'clock in the morning.

Q. Were you present in the courtroom at the trial before Judge Spencer?

A. Yes.

Q. Had you pleaded guilty or innocent to the charges against you?

A. We pleaded not guilty.

Q. Do you recall what Judge Spencer's verdict was in your presence?

A. The verdict was guilty.

Q. Did he sentence you?

[fol. 385] A. Yes.

Q. What was the sentence?

A. The sentence was four months and \$200 fine, or six months and six days, I believe is the way it worked out.

Q. And what happened after sentence was passed?

A. We were sent back to our cells.

Q. How long did you remain in jail?

A. Until the following Tuesday.

Q. Then you were bailed out?

A. Yes.

Q. After you were bailed out, where did you go?

A. We resumed our interrupted journey; however, because of the delay caused by our being imprisoned, we couldn't stop at Chattanooga and Sewanee and other places along the way; we went directly to Detroit.

Q. What was going on in Detroit at this time?

A. The general convention of the Episcopal Church.

Q. What does this mean? Do you know?

A. It's the meeting of the delegates, those responsible for the government of the American Episcopal Church. It meets every three years and takes up the business, administrative business, of the church.

Q. Was it ever your intention to go to jail in Jackson?

[fol. 386] A. No, sir, it was not.

Q. Did you want to go to jail?

A. No, sir, I did not.

Q. Did you enjoy your stay in jail?

A. No, I did not.

Q. Was your freedom restricted by being in jail?

A. Yes, it was.

Q. You weren't able to go out at will, were you?

A. No, sir.

Q. Did you have the opportunity to eat whatever food you wanted, or did you have to eat what was served you?

A. We never asked for a change of diet. I don't suppose that we would have been necessarily catered to. We ate what was set before us.

Q. By the way, have you ever been in jail before?

A. No, sir, I hadn't.

Q. Have you ever been in jail since?

A. No, I haven't.

Q. This was your one and only time? Is that right?

A. That's right.



**OFFER IN EVIDENCE**

Mr. Rachlin: At this point I would like to offer the same letters on behalf of Father Pierson that I have offered on behalf of the others who testified.

[fol. 387] The Court: Let it be received in evidence and marked as an exhibit.

(Same received in evidence and marked as Plaintiff's Exhibit No. 4, which Exhibit follows here below):

**EXHIBIT Plaintiff's 4**

WITNESS Pierson

May 15 1963

STATE OF MISSISSIPPI  
COUNTY OF HINDS

I, H. T. Ashford, Jr., Clerk of the Circuit and County Courts, and custodian of the said records in and for the said State and County, hereby certify that the foregoing 8 pages contain a true and correct copy of all the pleas and proceedings had and done in the case of State of Mississippi vs. Robert Laughlin Pierson in the County Court of the First Judicial District of said County in said State, and being case No. 12936.

Given under my hand and the seal of the County Court of said County and State this the 8 day of May, 1963.

H. T. Ashford, Jr. Circuit and County Courts,  
Hinds County, Mississippi  
/s/ ROBERT E. LILLEY D.C.

(SEAL)

• • • • •

[fol. 388]

No. 12,936

(Filed—Oct. 2, 1961)

October 2, 1961

County Court Clerk  
Hinds County Courthouse  
Jackson, Mississippi

Dear Sir:

Section 1205 of the Mississippi Code of 1942 provides that "The Justice of the Peace, or Mayor, or Police Court from whose judgment convicting of a criminal offense an appeal shall be taken, shall at once transmit to the Clerk of the Circuit Court the bond taken by him and a certified copy of his record in the case, with all the original papers in the case, as in appeals in civil cases."

In accordance therewith, I am enclosing herewith a certified copy of my record in the case of State of Mississippi versus Robert Laughlin Pierson, with all the original papers in the case to be dealt with according to law.

With very best regards, I remain,

Very sincerely yours,

/s/ JAMES L. SPENCER  
Police Justice and Ex Officio  
Justice of the Peace, City of Jackson,  
Hinds County, Mississippi

JLS:ssw

• • • • •

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[fol. 389]

(Filed Oct. 2, 1961)

IN THE POLICE COURT OF THE CITY OF JACKSON, MISSISSIPPI

STATE OF MISSISSIPPI

DOCKET No. 19

VS.

ROBERT LAUGHLIN PIERSON

PAGE No. 412

CERTIFICATE

I, James L. Spencer, Police Justice and Ex Officio Justice of the Peace, in and for the municipality of Jackson, Hinds County, Mississippi, do hereby certify that the attached and within:

1. Affidavit
2. Order for Cash Appeal Bond
3. Copy of Judgement
4. Notice from Sheriff
5. \_\_\_\_\_
6. \_\_\_\_\_

is a certified copy of my record in the case, with all the original papers in the case.

WITNESS MY SIGNATURE, this the 2nd day of October, 1961.

/s/ JAMES L. SPENCER

Police Justice and Ex Officio Justice of the Peace, City of Jackson, Hinds County, Mississippi.

• • • • •

[fol. 390]

(558-1)

## GENERAL AFFIDAVIT

(Filed Oct. 2, 1961)

STATE OF MISSISSIPPI  
COUNTY OF HINDS.

This day personally appeared before me, the undersigned James L. Spencer, a Police Justice of the City of Jackson, and Ex-Officio Justice of the Peace of said City, J. L. Ray who, being by me duly sworn, makes affidavit that Robert Laughlin Pierson on or about September 13, 1961, in the corporate limits of Jackson, First Judicial District of Hinds County, Mississippi, under such circumstances that a breach of the peace might have been occasioned thereby, did then and there congregate with others in or around the Continental Bus Terminal, 201 East Pascagoula Street, Jackson, First Judicial District of Hinds County, Mississippi, a place of business engaged in selling or serving members of the public, and did then and there wilfully and unlawfully fail or refused to disperse and move on when ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi.

J. L. RAY  
Affiant



[fol. 391]

SWORN TO AND SUBSCRIBED BEFORE ME this the 15 day of  
Sept., 1961.

/s/ JAMES L. SPENCER  
Police Justice and Ex-Officio  
Justice of the Peace

Page No. 412

Docket No. 19

STATE OF MISSISSIPPI

VS.

ROBERT LAUGHLIN PIERSON

JUDGMENT

(Filed Oct. 2, 1961)

This cause this day coming on for trial and the defendant being arraigned in court on a charge of violation of Section 2087.5 of the Mississippi Code of 1942, and having pleaded not guilty and the court having heard testimony and being of the opinion that the defendant is guilty, it is therefore considered by the court and so ordered and adjudged that the defendant Serve a jail term of 4 months and pay a fine of \$200.00 and be committed to jail until paid.

ORDERED AND ADJUDGED, this the 15th day of September, 1961.

[fol. 392]

/s/ JAMES L. SPENCER  
Police Justice and Ex Officio Justice  
of the Peace, Hinds County, Mississippi

Disposition of Defendant: Mittimus to Sheriff

IN THE MUNICIPAL COURT OF THE CITY OF JACKSON, FIRST  
JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

CITY OF JACKSON

VS.

ROBERT LAUGHLIN PIERSON

ORDER FOR CASH APPEAL BOND

(Filed Oct. 2, 1961)

This cause this day coming on to be heard on the oral motion of the defendant, Robert Laughlin Pierson by and through his attorney, for authority to post a Cash Appeal Bond in lieu of a bond with sureties, and it appearing unto the Court that the defendant is a non-resident of the State of Mississippi and that no person, who has property within the State of Mississippi, is willing to serve as surety on his bond and that the defendant should be allowed to post a Cash Appeal Bond.

It is, therefore, Ordered and Adjudged that the defendant, Robert Laughlin Pierson, be and he is hereby authorized to post a Cash Appeal Bond of Five Hundred (\$500.00) Dollars and that the Sheriff of Hinds County be and he is hereby authorized to accept the same.

[fol. 393]

ORDERED AND ADJUDGED on this 18 day of September, 1961.

/s/ JAMES L. SPENCER  
Municipal Judge & Ex-Officio  
Justice of the Peace

Approved and agreed to:

(Signature illegible)

City Prosecutor

JACK H. YOUNG

Of Counsel for Defendant

• • • • •

Cash bond is accepted because Robert Laughlin Pierson is a non-resident of the State of Mississippi and knows no person within the State who has property and is willing to sign bond.

**APPEAL BOND**

(Filed Oct. 6, 1961)

No. 12,936

STATE OF MISSISSIPPI  
County of Hinds

KNOW ALL MEN, That we Robert Laughlin Pierson Principal, and ——— and ——— sureties are held unto the State of Mississippi in the penal sum of (\$500.00) Five Hundred & No/100 Dollars, for payment of which we bind ourselves and legal representatives thereunto, jointly and severally and firmly by these presents, signed with our [fol. 394] names this 18 day of September, A. D., 1961.

The condition of the above obligation is that the above named Robert Laughlin Pierson on the 15th day of September A. D., 1961, before the Municipal Court of the City of Jackson in and for the said county and State, was duly and regularly arraigned and tried on a charge of: Breach of the Peace and was then and there by the said Municipal Court adjudged "Guilty as Charged" and fined in the sum of (\$200.00) \$200.00 and four months in jail dollars and all costs. And the said Robert Laughlin Pierson hath prayed an appeal of the said judgment to the next term of the County Court in and for said County and State.

Now, THEREFORE, If the said Robert Laughlin Pierson shall appear in person at the next term of the said County Court, and there remain from day to day and from term to term until discharged by law from the said charge, there then this obligation shall be void, otherwise it shall be in

full force and effect and binding on all parties, joint and several, therein named.

Given under our hands, this 18 day of September 1961.

/s/ ROBERT L. PIERSON Principal  
810 Fifth Avenue Surety  
New York, N. Y. Surety

[fol. 395] The foregoing Bond was filed and approved this 19 day of Sept. 1961.

J. R. GILFOY, Sheriff & Tax Collector  
Sheriff of Hinds County.

By /s/ Fred Pickett, Deputy Sheriff.

(Filed Oct. 2, 1961)

Honorable James L. Spencer  
Municipal Judge  
Jackson, Mississippi

Dear Sir:

Pursuant to Section 1204, Mississippi Code of 1942, as annotated, I, the undersigned, Sheriff of Hinds County, Mississippi hereby advise you that I have taken a cash appeal bond from the following named individual, after having duly approved the same; that I have further turned over the said bond to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi.

I hereby notify you as Municipal Judge of the City of Jackson, Mississippi, that an appeal has been taken with regard to said individual and I direct you to send up all papers regarding said individual to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi, as if the appeal bond had been filed with you, from whose judgment the appeal was taken.



[fol. 396]

*Name*  
Robert Laughlin Pierson

*Date of Bond*  
Sept. 19, 1961

Thanking you for your compliance with this request, I remain,

Sincerely yours,

/s/ J. R. Gilfoy  
J. R. Gilfoy, Sheriff  
Hinds County, Mississippi  
/s/ by Fred Pickett, D. S.

12936 STATE OF MISSISSIPPI

VS

ROBERT LAUGHLIN PIERSON

It is ordered and adjudged that a Nolle Prosequi be and the same is hereby entered in the above styled and numbered cause on Motion of the City Prosecuting attorney

Russell D. Moore  
County Judge

State of Mississippi,  
County of Hinds

I, H. T. Ashford, Jr., Clerk of the Circuit Court in and for the said State and County do hereby certify that the above and foregoing is a true and correct copy of the original Minutes County Court and the same is of record in this office in Minute Book No. 21 at page 310

Given under my hand and the seal of the Circuit Court at Jackson, this the 7 day of May 1963

(SEAL)

H. T. ASHFORD, JR., Circuit Clerk  
By /s/ Robt. E. Lilley D. C.

[fol. 397] Q. Now, Eather Pierson, I take it that you appealed your conviction from Judge Spencer's verdict?

A. Yes.

Q. As a result and as a part of the business of the appeal, did you make two trips from your home to Jackson, Mississippi?

A. Yes—No, I didn't. I made—I'm sorry, I did. I made two trips.

Q. And you went back home?

A. Yes.

Q. And do you know what the expense of the trip from your home to Jackson, Mississippi, and back was?

A. It runs about \$175 round trip, coach fare, with incidental expenses.

Q. And you did that twice? Is that right?

A. That's right.

Q. I take it you had no other actual monetary expenses beyond that? Is that correct?

A. No.

Q. Did you suffer any loss of income as a result of either your stay in jail or your trips back and forth to Jackson?

A. Not actually loss of income; certainly loss of productive time.

Q. Have you been the subject of any abuse or criticism as a result of your stay in jail?

[fol. 398] A. Out of a number of letters that I received, I could certainly find at least half a dozen references to my time in jail.

Mr. Watkins: We are going to object to this on the ground that those letters would be the best evidence.

The Court: Sustain the objection.

Mr. Rachlin: Your Honor, again I state it is not a question of the truth of the statement in the letters. It is the fact that he has been the subject of ridicule.

The Court: The letters would be the best evidence of whether or not it was ridicule or not. I will let him say he received about half a dozen letters, without disclosing the

contents, because the contents of the letters would be the best evidence.

Mr. Rachlin: Your witness.

Cross examination.

By Mr. Watkins:

Q. Reverend Pierson, do I understand you have been an Episcopal minister since about 1954?

A. Since 1953, actually.

Q. And that would be a period of ten years?

A. Yes.

Q. How many churches have you served as the priest in charge, during that period?

[fol. 399] Mr. Rachlin: I object to the question, Your Honor, as being completely irrelevant. What difference does it make?

Mr. Watkins: He has gone into this man's background. I think I am entitled.

The Court: Overrule the objection.

A. One.

Q. For what period of time were you priest in charge of that one church?

A. I was priest in charge from March, 1955, until about a year and a half later, which would be about the Fall of 1956.

Q. Then you have served as a priest in charge of a church for one and a half years during the past ten years? Is that correct?

A. That is right.

Q. Were you gainfully employed at the time of your trip on this pilgrimage?

Mr. Rachlin: Your Honor, this is irrelevant on the question of damages. He has already stated that except for the travel, he suffered no monetary damage; and, therefore, the question is irrelevant.

The Court: He said he lost some compensable time, as I recall his answer. I'll overrule the objection.

[fol. 400] Q. Do you remember the question?

A. Was I gainfully employed? Yes—This would be September.—No, I was not gainfully employed.

Q. For the purposes of the trip, they were correctly stated, insofar as you were concerned, were they not, in Exhibit A to your deposition? Do you recall that document?

A. Yes, I do.

Mr. Watkins: It has been marked Defendant's Exhibit 1 here.

Q. Is that the document you say correctly reflects the purposes of the trip?

A. Yes, it does.

Q. As I understand it, the first stated purpose was to investigate segregation in your church schools. Did you do so?

A. I don't see the word "investigate" in here.

Q. Well, substitute—What was the purpose with reference to the church—

Mr. Rachlin: I think there is an obligation to read this document and not to mislead this witness.

Mr. Watkins: The witness has the document in his hand.

The Court: Overrule the objection.

A. You want me to state the purpose of our trip?

[fol. 401] Q. Yes, with reference to the schools.

Mr. Rachlin: I have my standing objection on this, don't I, Your Honor?

The Court: Yes, I'll let you have a standing objection.

A. I will state our purpose as being one of communication with our clerical brethren, our brethren lay and clerical in the South, and throughout the part of the country that we were to have traversed during our pilgrimage, communication in an attempt to understand their problems and to let them know that we were concerned with their problems, and to hope to share in their problems in some way.

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Q. Did you visit any Episcopal school in the State of Mississippi?

A. We visited All Saints Junior College in Vicksburg, Mississippi.

Q. Is that a segregated school?

A. I believe it was then.

Q. Is it now?

A. I don't know.

Q. Did you make any effort to integrate that school on your visit?

Mr. Rachlin: I think the term "make an effort" is susceptible of many meanings, and I would like Mr. Watkins to be a little more explicit so the witness is able to answer the question properly.

[fol. 402] The Court: Overrule the objection.

Q. Did you make any effort to change that from a segregated school to an integrated school?

A. Depending on what you mean by "segregated" and "integrated," I could answer yes, we did.

Q. What effort did you make to change it?

A. We brought a group of 28 priests, some of whom were white, some of whom were Negro. If this constitutes integrating the school, I don't know, because I don't know what you mean by "integrating."

Q. Did you make an effort to change the rules and customs of that school by including as either students or faculty members both people of the Caucasian and the Negro races?

A. Certainly made an effort by persuasion to indicate our—I would say we made an effort by persuasion to do this. Yes.

Q. But not physically?

A. Well, we had tea at the headmaster's house as an integrated group. Now, again I say I don't know what you mean by the word "integrated."

Q. Did you attempt to forcibly change any of the rules, regulations or customs of that institution?

A. If the custom of the institution had in the past been [fol. 403] in the past to have segregated teas and segregated meetings on the campus, then we forcibly changed the pattern.

Q. I want to ask you, Reverend Person, if that identical question wasn't asked you on your deposition of February 15, 1961, in Jackson, and if your answer was not, "No," and nothing else?

I show you on Page 11 of your deposition the question and answer to which I refer.

A. It is on Page 11 of my deposition. I learned a lot about integration between that and Page 82.

Q. Please answer my question now as to whether you gave the answer "No" to that question.

A. That's right.

Q. —To that question on your deposition.

A. That's the answer I gave.

Q. Did you visit any other church school in Mississippi?

A. No, sir, we didn't.

Q. Was your visit to All Saints College your only purpose in coming to Mississippi?

A. May I correct my last statement? You said "church institutions"?

Q. No, sir, I said "schools."

A. Oh, schools. All right. No, we didn't.

[fol. 404] Now, the next question? I'm sorry.

Q. Was your visit to All Saints College your only purpose in coming to Mississippi?

A. No, sir.

Q. What other purpose did you have?

A. Our purpose in coming to Mississippi can only be taken in context of the overall purpose of the pilgrimage, wherein any one visit could not constitute the purpose of the entire pilgrimage.

Q. All right. You told us you came here for the purpose of going to All Saints. Now, what else did you come to Mississippi to do?

A. We came to visit— Well, actually, I believe—I realize I am bound to stick to my deposition, and I think what I recall having said at that time was that we don't—that we didn't know what we were going to do after we left Vicksburg, Mississippi.

Q. Which wasn't exactly the truth, was it, Reverend?

A. Well, the only reason I thought of it just now is because it is the fact; we didn't know what we were going to do after we left Vicksburg. We knew we were going to come to a small college outside Jackson, Mississippi, that night and would discuss our next move.

[fol. 405] Q. You knew what your next move was going to be, didn't you?

A. No, sir, we didn't.

Q. You mean you made that decision the night before, at Tougaloo?

A. Yes, sir.

Q. And that's the first time you knew anything about going as a Freedom Rider or like the Freedom Riders did to the Trailways bus station?

A. I wouldn't say it was the first time that the possibility of either going to the Jackson bus terminal or any of several other possibilities were mentioned; they were all mentioned.

Q. The pamphlet, Exhibit 1, which purported to state the purposes of your trip, criticized segregated housing near Detroit, did it not?

A. Yes, sir.

Q. Did you visit that place or do anything about that situation on your trip?

A. No, sir. As I stated before, our trip was interrupted. We were unable to carry out all of the projected, planned visits.

Q. You met the others in New Orleans by prearrangement, didn't you?

A. Yes, sir.

Q. Reverend John Morris, the Executive Secretary of [fol. 406] ESCRU, made the arrangements for the New Orleans meeting, did he not?

A. I believe so. They were under his authority.

Q. There were approximately 28 members of your group present at the meeting at the YMCA in New Orleans the night of the 11th, were there not?

A. Yes, sir.

Q. How many other people were present besides the 28 members of your group?

A. I would say about 35 in all. That would mean that there were eight others.

Q. Who were the others besides your group present?

Mr. Rachlin: Your Honor, I am going to object to this question. What difference does it make who was present at a meeting in New Orleans?

The Court: Overrule the objection.

A. I didn't know the names of any of the men present except the name of the Reverend Wyatt T. Walker.

Q. Was he an Episcopal minister?

A. No, sir, he was not.

Q. What was the purpose of his presence at your meeting that night?

A. Well, as I later discovered, he had been involved in [fol. 407] some of the demonstrations against sit-ins in certain parts of the South and, I believe, had been a Freedom Rider and had run into considerable—had first-hand experience of difficulties encountered in these sit-ins and Freedom Rides, and he told us a little bit about what might be expected if we encountered such things in the—during the course of our trip.

Q. He was there as an expert on recent racial violence and on recent Freedom Ride activities, wasn't he?

A. Well, I didn't know how recent any of them had been. I had no knowledge of this at that time.

Q. Did he advise you that night?

A. Yes.



Q. Was the advice that he gave to you helpful and needed advice, in your opinion?

Mr. Rachlin: Are we now involved in an analysis of the advice given by a stranger who is not a party to this proceeding, whether it was helpful or not? What difference does it make? Suppose it wasn't helpful?

The Court: I'll take your statement as an objection, and I overrule the objection.

Q. Was it helpful and needed advice?

A. It was helpful advice.

[fol. 408] Q. Tell us what he told you, Reverend?

Mr. Rachlin: I object on the ground it is hearsay, Your Honor.

Mr. Watkins: Your Honor, this is a meeting planning the trip to Jackson, being addressed by the—

Mr. Rachlin: —I object *to that* statement. There is no evidence in this record of a meeting planned at Jackson. And how many times must Mr. Watkins be told that this is not the fact?

The Court: I'll overrule the objection. Be seated. (To witness) Answer the question.

Q. What did Wyatt T. Walker tell you that night at that meeting?

A. Well, he told us what would happen, told us a little bit about the history of the non-violent approach to integration activities, and told us how the idea had been developed, and what we might expect, and how we might face—

Q. What did he tell you that you might expect?

A. He said we might be hit on the head from the back, we might be knocked down, might have chairs thrown at us.

Q. Did he demonstrate some of those possible occurrences to you?

A. There was one demonstration that I recall. I don't recall any others. There may have been one or two others.

Q. What was the one?

[fol. 409] A. I think somebody got knocked off a chair. The surprise element was what he was pointing out to us, mainly, indicating to us that the first thing, the natural reaction, for a person when he is attacked from behind by surprise is to counter-attack, and that this is not what the non-violent theory teaches.

Q. At that time there had been a number of newspaper accounts relating instances of violence in the South, recent instances, with which you were familiar, had there not?

A. Yes, sir.

Q. And that included the recent violent instances of the Freedom Riders in Alabama, didn't it?

A. Yes, sir.

Q. When an Episcopal minister visits another state, is it customary for him to call on or contact the bishop of the state which he is visiting?

A. It depends on the nature of his visit, the purpose of this visit.

Q. Did your group get in touch with Bishop Duncan Grey when you came to Mississippi?

A. Yes, I believe we did.

Q. How?

A. By letter.

Q. Did you personally contact him after you got to Mississippi?

[fol. 410] A. I did not.

Q. In your talks with Bishop Co-adjutor John M. Allen at All Saints College, is it not a fact that he tried to discourage your group from coming to Jackson?

A. I don't recall him discouraging us from coming to Jackson. I don't remember.

Q. You do not remember, so you can neither admit nor deny that? Is that right?

A. That's right.

Q. You were familiar with the fact that news items on the radio and television announced the presence of your group in Jackson, were you not?

A. Yes, I did learn that, the morning that we were to go off to Chattanooga.

Q. Do you know why the presence of your group in Jackson was sufficient news importance to be on radio and television that morning?

Mr. Rachlin: There is no evidence in the record that it was on the radio and television that morning.

Mr. Watkins: He just said it was.

Mr. Rachlin: He didn't say that morning. That was never the question.

The Court: Very well. Ask whether it was on that [fol. 411] morning.

Q. Was it on that morning?

A. I knew it was on the radio that morning, but I did not know whether or not it was on television that morning.

Q. Now, do you know why your visit was of sufficient news interest to be on radio that morning?

A. No, sir.

Mr. Rachlin: Object to the question. It requires a mental process, which is inadmissible in evidence.

The Court: Well, I don't know whether it would be or not. It is a question of whether or not he knows of his own personal knowledge. But he answered that he didn't know.

Q. Did those broadcasts that you heard that morning make you apprehensive?

A. Somewhat apprehensive, yes.

Q. Why?

A. Because, as has been pointed out in testimony, I realized that we were an integrated group traveling in certain parts of the country where, as I had learned before, integrated groups are not welcomed by a very small but vociferous minority of the population, and I was somewhat apprehensive about this small, vociferous minority.

[fol. 412] Q. Before coming to Mississippi, didn't you advise your wife that you had been accepted for a Freedom Ride?

Mr. Rachlin: Your Honor, I object.

The Court: I sustain the objection to that.

Q. You knew, Reverend Pierson, that hundreds of Freedom Riders had visited Jackson before your group got here?

Mr. Rachlin: I want the question clarified that there is to be no necessary connection between the group of which Father Pierson was traveling and the Freedom Riders, as has been described innumerable times in the testimony.

The Court: Overrule the objection.

A. I learned later, I believe. I'm not sure just when this knowledge became—when these facts came to my attention. I had, of course, read of some disturbances in Jackson, but I must be frank to say that I didn't know very much about Jackson; in fact, I didn't even know where it was. I'm ashamed, in the light of the fact that it's the cross-roads of the South, according to Jimmy Wade, I'm ashamed to say I didn't know where it was. That's how little I knew about Jackson, as compared to other southern cities. So I can't say when I knew that there had been violence in Jackson.

[fol. 413] Q. Did you openly endorse the purposes and activities of those groups that called themselves Freedom Riders?

A. No, sir.

Q. Did you disapprove?

A. Disapprove of what?

Mr. Rachlin:—Wait a minute. Your Honor, are we going to the negative concepts of what a man thinks? Is that what kind of testimony we?

Mr. Watkins: I'm not asking what he thinks. I'm asking what he said.

The Court: Overrule the objection.

Q. Did you disapprove?

A. Disapproved of—



Q. —the activities or purposes of the Freedom Riders in Jackson?

A. I've never disapproved of the purposes. I have disapproved of some of the activities, which is why I couldn't answer yes to the first question.

Q. You recognized that your presence in Jackson would be regretted by some, didn't you?

Mr. Rachlin: I'm sorry, I didn't hear you.

(Question was repeated)

Mr. Rachlin: I think that question has to be made more specific, and I would like—

[fol. 414] The Court: —Very well, I will sustain the objection to that, whether it was to be regretted or not.

Q. Even the printed statement of your reasons for your visit contain that statement, don't they, Reverend Pierson?

Mr. Rachlin: Now, just a moment. There is no proof that he wrote that statement or had anything to do with the preparation of it. I object to the question.

Mr. Watkins: Your Honor, he has adopted it as a statement of the purposes of their trip. If it's got an admission against interest in it, I think I'm entitled to the benefit of it, unless he wants to disavow it now.

A. I accept the statement.

The Court: Let me see the exhibits again. I haven't read it since the first day it was introduced.

Mr. Watkins: I'm referring to the underlined portion of the last.

(Same handed to Court)

The Court: I overrule the objection. The document shows the purposes of the entire group that made the trip, so I will overrule the objection.

Q. In the statement of the purposes of your trip, it states that, "In places where our coming may be regretted by

[fol. 415] some, we will seek opportunities to confer with the clergy . . . ”

Was Jackson one of those places that you were referring to?

A. May I go back to your question?

Q. Yes, sir. My question was—

A. —recognizing that it would be regretted,—

Q. —Didn't you recognize that your presence in Jackson would be regretted by some?

A. Which I wouldn't take as having the same meaning as “may be regretted by some.”

Q. So your answer is that you do not—Your answer was to the negative to the question? Is that correct?

A. No, I didn't give an answer to it because I said, I began to say, that I didn't know what you meant by “recognizing.”

I believe I have said earlier in my deposition that I had hoped that our action would not be regretted by any, but that it may be regretted by some.

Q. And in connection with that regret, or possible regret, you realized that you had beliefs which were strongly contrary to the beliefs of many people in this area, didn't you?

A. I don't know that.

Q. Let me ask you this: Do you believe in abolition of [fol. 416] all laws prohibiting intermarriage of persons of the Caucasian and the Negro races?

Mr. Rachlin: Your Honor, I object to that question. There is no purpose—What difference does it make what he believes? We're trying a case of what he did and what he didn't do and what the defendants did or didn't do.

The Court: Overrule the objection.

A. I would prefer to rephrase that statement, putting it into my own words, not because I know where it comes from, because in my deposition I wanted to rephrase it before I even knew where it came from.

Q. Let me ask you this question. I'm going to give you a chance to rephrase it any way you like, but in your deposition the specific question was asked you, "Do you believe in abolition of all laws prohibiting intermarriage of persons of different race?" and your answer was, "Yes, if such laws exist." Wasn't that your answer?

A. Yes.

Q. Is it still your answer?

A. Yes.

Q. In coming to Mississippi, were you familiar with the fact that Mississippi does have laws prohibiting marriage [fol. 417] between persons of the Caucasian and Negro races?

A. No, sir, I didn't know that.

Q. Before your arrest, the Jackson police officers asked your group to move on out of the station several times before they arrested you, did they not?

A. Yes, sir.

Q. Were those officers courteous in so doing?

A. Yes, sir.

Q. You refused to obey the orders given you at that time, did you not?

A. Yes—

Mr. Rachlin: —Which one? There were two sets of orders.

Mr. Watkins: I'm referring to the first orders given by Officers Nichols and Griffith.

A. Yes, sir, we refused.

Q. Subsequently, Captain Ray arrived and asked your group again to move on out of the station, several times, didn't he?

A. Yes, sir.

Q. Was he courteous in his request?

A. Yes, sir.

Q. You refused to obey Captain Ray's orders, did you not?

A. Yes, sir. I would say that we refused to obey that [fol. 418] order. However, implicit in that order is another order, I believe, and we recognized this, as we were given a choice of two things to do, both of which were commands on the part of Captain Ray, and we chose the one rather than the other.

Q. You knew that the refusal to obey the police orders would result in your arrest, didn't you?

A. Yes, sir.

Q. What attorneys were representing you in your trial in the municipal court in Jackson? -

A. What attorneys?

Q. Yes.

A. Mr.—I gave it on my deposition. I can't remember.

Q. Mr. Jack Young?

A. Mr. Jack Young.

Q. And Mr. Carl Rachlin?

A. And Mr. Carl Rachlin.

Q. Both of them had previously represented many Freedom Riders in that court, had they not?

A. I do not know.

Q. Who furnished their services?

A. Their services to me?

Q. Yes.

[fol. 419] A. Mr. Rachlin was a New York attorney who had been contacted by Mr. Morris. That is all I know.

Q. You did not know that he was general counsel for CORE?

A. I knew that he had had some association with CORE at some time previous to that. I didn't know whether it was a lasting, whether it was a continuing relationship, or whether it had been a one-time relationship; I knew very little about Mr. Rachlin or Mr. Young.

Q. Did you or either of your attorneys request a trial by jury in the municipal court?

A. No, sir.

Q. Did you testify during your trial in the municipal court?



A. No, sir.

Q. Did you testify in your trial in the county court?

A. No, sir. May I add that we were—I was present at the testimony in municipal court, and we were not informed that we had the right to a trial by jury.

Q. You were assuming with New York and Jackson counsel that they knew what your rights were under the law, weren't you?

A. I'm assuming that, yes.

Q. At the time of your trip to Jackson, did what you considered racial discrimination exist in any form in the [fol. 420] county in which you were living at the time?

Mr. Rachlin: Your Honor, I really don't see the relevancy of that question.

The Court: Read the question back.

(Question was read by the court reporter)

The Court: Yes, sustain the objection.

Q. Going into a little more detail in your educational background, you received a BS Degree from the University of Wisconsin in 1949, did you not?

A. Yes, sir.

Q. Subsequently, you registered as a student at Garrett Biblical Institute, a Methodist seminary, did you not?

A. Yes, sir.

Q. You became dissatisfied and dropped out, did you not?

Mr. Rachlin: I am going to object to the question. I don't see that it makes any difference.

The Court: Overrule the objection. You went into his background, so I think he is entitled to go to reasonable length.

Mr. Rachlin: I'm not aware that I went into his background.

A. May I ask for a clarification of the word "dissatisfied"?

Q. If I have not used the right word, I would like for you [fol. 421] to substitute a word for me. I understood you to so testify on your deposition. Do you want me to read it to you?

A. Yes, sir.

Q. After testifying that you had gone to the Methodist seminary, you were asked this question:

"You disagreed with their teachings and dropped out, didn't you?"

Your answer was,

"I wouldn't say so much I disagreed with their teachings; I was dissatisfied with their lack of teaching."

Is that the correct answer?

A. Yes, sir, that is correct. That's why I wanted a clarification.

Q. Yes, sir. You did drop out of the Methodist seminary, didn't you?

A. Yes, sir.

Q. You subsequently entered an Episcopal seminary in Wisconsin, did you not?

A. Yes, sir.

Q. And you now find yourself in disagreement with the separate but equal practices of the Episcopal Church, do you not?

Mr. Rachlin: Well, I'm not aware that there is any such thing in the Episcopal Church, Your Honor. I don't think the question is appropriate.

[fol. 422] The Court: Sustain the objection on the ground that you assume a fact that has not been shown.

Q. Is it not a fact, Reverend Pierson, that separate but equal facilities exist in the Episcopal Church, both in the North and in the South, as stated in Exhibit of your purposes for coming to Mississippi?

Mr. Rachlin: I'm going to object to that question because there is no proof that this is— The question Mr.

Watkins asks assumes that this is the general practice of the Episcopal Church. The document referred to said there were "instances" of this, and I don't think we can generalize from a specific.

The Court: If the witness knows, I will overrule your objection.

Q. Let me read to you from Defendant's Exhibit 1, and I will ask you to read it with me, please:

"Our 'separate-but-equal' parish system, as it exists in the North as well as the South, is partly a result of the housing pattern, but also a contributor to it."

Does the system referred to there exist?

A. Yes.

Q. Did it exist in your home county at the time of your trip to Jackson?

[fol. 423] A. Yes, sir. As I said in my deposition, it exists contrary to the teaching of the church.

Q. Don't you think, Reverend, that it would have been more appropriate for you to devote that time for the correction of that evil as you saw it existing in your home town county, rather than coming to Jackson, Mississippi?

Mr. Rachlin: Objection, Your Honor. I—

The Court: —Yes, sustain the objection.

Q. You have told me about the one church that you served in as priest in charge, have you not?

A. Well, I've been associated with a number of parishes; however, you limited the use of the term "priest in charge"—I have been assistant minister, I've been priest in charge, I've been vicar, I've been supply priest—so there is a very short time that I was a priest in charge.

Q. Referring to that church in which you did serve as priest in charge, its congregation was predominantly Negro and West Indian, was it not?

Mr. Rachlin: Objection, Your Honor. What difference does it make?

The Court: Yes, I think I'll sustain the objection to that.

Mr. Watkins: Your Honor, for the record, may I state [fol. 424] that I wanted to show that another race attempted to enter that church and that the Negroes of the church objected?

Mr. Rachlin: What difference does it make? Suppose it's true?

Mr. Watkins: Here's a man on a pilgrimage, a religious, segregation pilgrimage—

Mr. Rachlin: The Constitution of the United States—

The Court: I believe I'll sustain the objection. That is too far away.

Q. Reverend, you are familiar with the article entitled "Rebel in the Rockefeller Family," which appeared in the May, 1962, issue of REDBOOK, aren't you?

Mr. Rachlin: Objection, Your Honor. What difference does it make? He's not accountable for the articles that somebody may have written.

Mr. Watkins: Just a minute, Your Honor. He knows—

The Court: —I will overrule the objection and let him answer if he's familiar with it.

Q. Are you familiar with it?

A. Yes, sir.

[fol. 425] Q. I want to ask you if it's not a fact that before that article was published it was submitted to you for you to read and suggest any corrections that you wanted to make in the article?

Mr. Rachlin: Your Honor, this is not the best evidence in this article.

The Court: The question is whether or not it was submitted to him. I'll overrule the objection. I'll let him answer that question.

A. I'll say it caught up with me while I was on an extended tour throughout the West, the entire West Coast,



and I caught it just in time to go over it very lightly, during which time I was also trying to prepare a half-way decent sermon for the next morning, and I sent it back special delivery after having hit the high spots.

Q. However lightly or thoroughly you went over it, it was submitted to you by REDBOOK magazine for your study and suggested corrections before they published it, was it not?

A. Yes, sir, suggested corrections. There was no guarantee at any time, as far as I know, that the corrections that I put in the margin, would be adopted by the editors.

Q. Well, let me ask you if you suggested any corrections [fol. 426] in that article where, on Page 51 of the Magazine, it states, "Newspapers received the information with an interest almost equaling the Piersons'. 'Arrest Son-in-Law of Governor Rockefeller as Freedom Rider,' a New York morning paper proclaimed."

Did you object or ask for any change in that statement in the article?

Mr. Rachlin: I object to the question, Your Honor. This is not the best evidence.

The Court: Overrule that objection.

A. I have seen those headlines. I can't—I couldn't ask them to change a headline which had already appeared.

Q. All right.

A. That would be asking them to make—would be impossible to have corrected a direct quote from a newspaper headline, if it was a true quote.

Q. Now, on Page 129 of that magazine, that article purports to quote you in your conversation with Mrs. Pierson with reference to the nature of the trip you proposed to make to Jackson, and I want to ask you if you asked for any corrections in this report:

"And so at the end of August, while they were holidaying—"—

[fol. 427] Mr. Rachlin: Excuse me. I object to this. I think it is prejudicial.

The Court: Let me see it, Mr. Watkins.

(Same is handed to Court)

Mr. Rachlin: The entire article I consider prejudicial. He didn't write the article. The proof is clear he did not write the article and cannot be bound by what it says.

Mr. Watkins: We think the proof shows, Your Honor, that that was submitted to him and he permitted its publication without any change whatsoever, and it quotes him as referring to himself.

Mr. Rachlin: I'm not aware that REDBOOK magazine needs acceptance from Father Pierson as to whether it wants to print an article or not.

The Court: Just a moment.

I will sustain the objection to that, Mr. Watkins. It goes a little too far afield and in a foreign field that would unduly prolong the trial of this case, and, substantially, a lot of the things he has testified about here on the witness stand. So I am going to sustain the objection to the REDBOOK magazine.

You can offer it into evidence, if you want to, and make [fol. 428] it a part of the record, because it was sent to him and he read it and mailed it back. So if you want it made a part of the record, you may let it be marked as an exhibit but not received in evidence.

Mr. Watkins: I would like for it to be so marked.

The Court: Very well.

(Same was marked as Defendant's Exhibit No. 11, which Exhibit follows here below:)

## EXHIBIT DEFENDANT'S #11

WITNESS PIERSON

MAY 15 1963

## THE CRUSADING MINISTER IN THE ROCKEFELLER FAMILY

Robert L. Pierson broke with his background to become an Episcopalian, startled his friends by marrying an heiress and surprised even himself by going to jail for his beliefs

BY FERN MARJA ECKMAN

On September 13, 1961, Ann Rockefeller Pierson, tense and uneasy, waited for a phone call in her family's vacation cottage at Seal Harbor, Maine. She was expecting word from her husband, the Reverend Robert L. Pierson, an Episcopal priest.

The telephone rang. It was long distance.

"Well," said the familiar voice at the other end. "I'm in [fol. 429] the Jackson jail."

"You're what?" said Ann Pierson.

In Eagle, Wisconsin, in the living room of their century-old, yellow-brick house, Mr. and Mrs. Donald M. Pierson drowsily snapped on the television set for the midnight news before going to bed.

"And here," the newscaster intoned, "is the Reverend Robert Pierson in the town jail at Jackson, Mississippi." The Reverend Robert Pierson's parents, sleep forgotten, came to shocked attention.

Newspapers received the information with an interest almost equaling the Piersons'. Arrest Son-in-Law of Governor Rockefeller as Freedom Rider, a New York morning paper proclaimed. A major wire service in a bulletin from Jackson reported:

"Police arrested 15 Episcopal ministers today when the biracial group attempted to enter a segregated restaurant at a bus station here. One of the clergymen jailed was the Reverend Robert L. Pierson of Evanston, Illinois, son-in-law of Governor Rockefeller of New York. Officers rounded up the ministers, on a 'prayer pilgrimage' from all parts of the nation, when they ignored orders to 'move on.'"

The headlines erupting across the country inevitably centered on young Pierson. Not only had he been selected by his clergymen companions as their spokesman, but his relationship to Nelson Rockefeller provided provocative [fol. 430] social and political overtones. Newspapers illustrated their stories generously with head shots of the photogenic Father Pierson in his neat clerical collar.

In upstate Rochester, New York, where Governor Rockefeller was addressing a town meeting, he was besieged by the press. Although he had never discussed the subject with his son-in-law, the governor issued a forthright statement:

"I admire the courage and dedication of these young people to the basic precepts on which this country was founded, and their dedication to the cause of making a reality out of those precepts."

Encouraged, the reporters asked if he intended to intervene on Pierson's behalf. Rockefeller in his reply indicated his understanding of his daughter's husband.

"He is one of a group who have dedicated themselves—for that I admire him—and he wouldn't expect any special treatment or want it," the governor said firmly.

Pierson himself was startled and dismayed by the avalanche of publicity. His instinctive reaction was to (Continued on page 122) recoil from the poised pencils, the massed cameras and the microphones. He wanted to shield the Rockefellers. But at the same time he was convinced that his cause was worthy and just. He decided finally that he would not seek the spotlight—but neither would he shrink from it. During his six days in jail he did not change [fol. 431] his mind. Nor has he changed it since.

The Reverend Cornelius DeWitt Hastie, of Boston, a traveling companion on the pilgrimage, recalls that Pierson never "mentioned his father-in-law at all." Father Hastie adds:

"As a matter of fact, until the arrests a number of us—myself included—had no idea he was related in any way to



the Rockefellers. I'd even called his wife long distance to deliver a message from Bob without realizing who she was." All Father Hastie and his colleagues knew was that the boyishly handsome young clergyman named Pierson was passionately committed to the concept of fellowship and integration.

The 15 ministers, sentenced to four months in jail for "disturbing the peace," were eventually released from their cells on bond scrapped up by the Episcopal Society for Cultural and Racial Unity (known as ESCRU), which had sponsored the antisegregation pilgrimage and scheduled it to begin in New Orleans and end four days later in Detroit. Today Pierson's case, like that of the other 14, is on appeal. His trial is set for May 8th. Once again, then, he will have to journey south to Jackson. But Father Pierson does not regret his time of decision or lament his prison experience.

"Where lawlessness is upheld by segregationists," he says, "and there is an attempt on the part of integrationists to alter that situation, nobody can stand in the middle. The moderate who tries to stand in the middle is, in effect, going over to the side of lawlessness.

[fol. 432] "There is only one race," Father Pierson believes, "and that is mankind."

Looking back over his personal history, Robert Laughlin Pierson finds it difficult to trace the evolution of his philosophy. He protests amiably that his was an "extremely normal" upbringing.

Certainly his parents harbored no conspicuously advanced views on race. Gray-haired and gracious, the Donald Piersons are neither markedly liberal nor reactionary. They are inclined to advocate "separate but equal facilities" for Negroes, although it is clear that their son's stand has shaken them a bit. They display a measured pride in his courage to practice what he preaches but wonder aloud "whether the Freedom Riders are going about it the right way." While they claim little credit for his freedom from

bigotry, it is clear that they always gave him liberty to find his own way.

"All through his life," says his mother, shaking her head fondly, "Bob was different from the others."

"Bob was always mature," comments his father with just a hint of boastfulness. "He always did his own thinking. And we let him do his own thinking. And the reason we did was because he usually did very sound thinking."

Bob, the Piersons' second child and first son, was born on the South Side of Chicago on March 9, 1926. His sister Jean, now Mrs. William Hirst, of Whitefish Bay, near [fol. 433] Milwaukee, Wisconsin, is six years his senior. His brother, Donald Martin Pierson, Jr., who is associated with a Denver firm, is five years his junior.

Their father, lean, laconic, kindly, somewhat more ruggedly individualistic in his opinions than his wife, was employed by one firm, the White Motor Company, for all but three years of his working life. He was hired as a purchase clerk in 1921; when he retired in 1959 he was manager of the Milwaukee branch.

Mrs. Pierson, short, plump, softly pretty, is a member of the Daughters of the American Revolution.

"I don't believe in everything they believe," she says a bit hesitantly. "My daughter dropped out because she was displeased by some of the things they did."

Both the senior Piersons are a little formal in discussing their middle child. They are at once more intimate, more involved and more relaxed in talking about Jean and Don. Even as a youngster Bob managed to move in his own orbit. As an adult his intellectual independence, his conversion from the Methodist to the Episcopal Church and his residence a thousand miles away from his parents, near New York City, seem to have placed him permanently beyond their full understanding in spite of his frequent home visits.

"When Bob went into the Episcopal Church," Mrs. Pierson admits bluntly, "I said, 'You know, Bob, our ancestors came over here just to get away from that.' And he said, 'Well, they got too far away.'"

[fol. 434] "I always tell Bob," says his father jestingly, "that the only difference between him and a Catholic priest is that he flunked Latin."

Going into the past, Mrs. Pierson recalls that Bob, named—perhaps prophetically—after his uncle, Robert Jerome Laughlin, a Presbyterian minister, was an unobtrusive, daydreaming little boy who loved to draw.

Bob Pierson remembers himself as "fairly quiet, never a great athlete, sort of fascinated by drawing and the graphic arts." Contemplatively he says, "I think I was a lot like my son is now. Joseph is only four, but he sits for hours and draws. He's not like the other three kids. Clare, the oldest, who is seven, likes to go horseback riding, and she'll say to Joseph, 'Won't you come?' And he'll say, 'No, I'm going to stay home and draw pictures.' I guess I was that way."

His parents confirm this. From the first he was more interested in block-building and blueprints of cars and boats than in games. ("You know those slick-looking cars you see around today?" his mother asks. "Well, Bob was drawing them when he was twelve or thirteen.")

As a schoolboy he tapped his parents' depression-strained resources as little as possible. Once, his father says, "the seat of Bob's pants had just about worn out, but he still kept saying he didn't need a new pair. We had to plead with him to buy clothes."

Considerate and peace-loving, he was a natural target for [fol. 435] youthful bullies. "Bob could fight; but he wouldn't," says Mrs. Pierson, still plainly perplexed by this early addiction to nonviolence. "He was the kid who wouldn't fight back."

He was consistently, even ostentatiously, nonathletic. "Why," says Mrs. Pierson, marveling, "Bob could just stand up and manage somehow to fall down and break his ribs."

"He liked to relax—he just about spent one whole summer in a chair," says his father, chuckling. "But he did play tennis later. And now he skis. . . ."

In 1934 the Piersons moved to LaGrange, a suburb west of Chicago. Seven years later, just six weeks after they had purchased their own home, Pierson was transferred by the White Motor Company to Whitefish Bay, where he remained until 1953, when he bought a 146-acre dairy farm in Eagle, now a nursery for 13,000 white pine trees.

Young Bob was the first Pierson to attend church in Whitefish Bay. "When he got back," says Mrs. Pierson, "I said, 'Well, what was church like?' And he said, 'It was just like going to church in our living room.'"

His dissatisfaction has not dimmed. In Father Pierson's judgment, his religious training in childhood was negligible. "I'd say the kind of religious upbringing I had as a kid is the kind ninety-five per cent of all American children get," he comments.

[fol. 436] "We Americans generally feel that religion is our own business. Being our own business, it is therefore nobody else's. If it's nobody else's, you never talk about it. And so it's one of the things that's really never communicated to anybody else."

At 17 Bob Pierson entered Lawrence College, in Appleton, Wisconsin. Conscientiously, if not exuberantly, he put himself down for a solid array of pre-engineering courses, persuaded that his "bent was not toward the humanities or toward philosophy, and pre-engineering would give me a preparation for almost any career I wanted."

He completed three semesters of college within a year. In 1944, at 18, he became an Army Air Force cadet. With characteristic honesty Father Pierson says: "I went into the Army as a volunteer, but you know I wouldn't have volunteered if I hadn't known I was going to be drafted."

When he was discharged 15 months later, at war's end, he had served in Texas, South Dakota and Illinois and had managed to demonstrate a vigorous nonconformity. "I was almost court-martialed," the clergyman says with relish.

What actually occurred was slightly less dramatic; he refused promotion, an unorthodox state of affairs that in-



furiated his sergeant. "Another fellow and I decided we were going to stay privates," Pierson explains cheerfully. "But there were these automatic P.F.C. ratings that went through. And nobody ever heard of anybody turning one [fol. 437] down. But we did."

"We just didn't think the raise of four dollars and fifty cents a month was worth it. It was a nutty thing to do."

The outraged sergeant then threatened to have them made corporals, which they also turned down. "The sergeant said, 'You can't turn it down,'" Pierson recalls. "I don't know whether he forgot about it or just let it ride, but he was kind of mad. . . ."

So Pierson stubbornly left the Army as he had entered it, a private. Unwittingly, though, he carried within himself the seeds of later and more meaningful intransigence. In Texas he had been nudged into painful recognition of racial discrimination.

"I remember seeing the first movie theater with an entrance for colored people," he says. "And buses with the signs 'white' and 'colored.' It shocked me."

The shock cracked the mold of his thinking, opening it to the stimulus of campus discussion at the University of Wisconsin, where he continued his studies after the war. The transition was gradual, almost imperceptible.

"I was a typical college student," he says. "I belonged to a fraternity that didn't admit Negroes, Jews, Chinese—anyone."

He had always taken his conservatism for granted. "For the first time I realized there was an alternative," he says. "The one of accepting the possibility that what I'd always [fol. 438] 'known' was not necessarily true—that 'my way' wasn't always 'the right way.'"

Years after he had completed the process of forging an independent outlook, Bob Pierson read that an Illinois chapter of his fraternity had pledged a Jewish student, deplored him in compliance with orders from the national body and finally, defiantly, replored him, prepared to ac-

cept the consequences. Father Pierson promptly wrote a letter to that insurgent chapter "congratulating its members on their stand."

From boyhood on he secretly had wanted to be an architect. "I think I could always remember buildings more than most people do. I had an urge to create, to build. . . ."

But the pressures of the war period had taken their toll. "My grades at Lawrence were not good enough to warrant getting into an out-of-state school," he says, "Wisconsin had no school of architecture. Illinois did, but it was taking only the cream of the crop. It was like pulling teeth—or knowing the governor of the state—to get into the University of Illinois. And I couldn't do it."

So he majored in "the next best thing, the closest thing I could find to architecture"—light building industries at the School of Commerce—and received a bachelor of science degree in the spring of 1949. He maintains now that his frustration was minimal.

"Finding your vocation sometimes consists of opening many doors," he says. "There are many possibilities and [fol. 439] interpretations. I don't know any better way to say it.

"You follow a course, and when it is no longer open to you, you take another course and follow that as long as it's open to you."

To many people this would represent nothing more than the recognition of opportunity. But for Father Pierson it has other implications. "Maybe that's the way God works," he says.

In his own case the right door did not open until a year after his graduation from the University of Wisconsin in 1949. During that year Bob Pierson had explored the building field, done a little traveling and a great deal of thinking. Early in 1950 he arrived home without a job.

"He sat in that chair," his mother recalls, "his legs stretched out. I thought he'd been looking at the want ads. I said, 'Aren't you looking at the ads?' He didn't an-

swer. Finally he looked up and said, 'I think I'll be going back to school.'

"I wondered what in the world he was going back to school for. He hesitated a little bit. Then he said, 'I think I'll go to a seminary.' I said, 'You do?' He said, 'What do you think?' I said, 'It's all right.' Then Bob said, 'What do you think Dad will think?'"

That spring, on the advice of his minister, Bob Pierson registered at the Garrett Biblical Institute, a Methodist seminary in Evanston, Illinois.

What shaped his decision to go into the ministry? "God," says Father Pierson. How? Possibly through environ-[fol. 440] mental factors, he suggests. To the best of his recollection, his mother had never pushed him in the direction of his minister uncle, but he had somehow sensed that she would be pleased if he took that path.

(Recently, informed of this motivation, Mrs. Pierson exclaimed, "Forever more!" Her eyebrows arched ceilingward in astonishment. "How Bob could have thought that! Isn't that funny?")

Life at Garrett Biblical Institute was not without its problems, however. "There was a sort of playing down of theology when I was there," Bob Pierson says. "There was this liberal attitude of 'Don't worry whether the devil exists or not—we've got problems here and now that have to be dealt with.'

"I had assumed—rather naively, as it turned out—that the seminary was the place where I would acquire the fund of knowledge I lacked about the Christian religion and its basic doctrines. But I was told, 'Don't worry about that.'

"I didn't think this was right and I said so. I told it to some of the professors and I told it to all the students who would listen. They looked at me with that funny look—a kind of 'Well, you'll probably go to the Episcopalians before long.' And about a year later, that's what I did."

There was an Episcopal seminary across the street from Garret. He consulted those in charge there, but was urged to postpone his decision for a year.

[fol. 441] "They said such an abrupt transition would be, in all probability, more than I could bear," he says. "They recommended that I do some reading in philosophy and history. But the main idea was to give myself a year to get my thinking straight.

"My parents weren't terribly happy, I suspect. They didn't indicate they were unhappy. That's not in the Calvinist tradition. They are really old-line, Bible-belt Presbyterians, and I knew they would prefer that I go back to the Presbyterians if I made any change from the Methodist Church, to which we currently belonged. But the Presbyterian setup was a lot like the Methodist. . . ."

While sorting out his emotions Pierson drove a truck for a dry-cleaning establishment in Milwaukee. In the fall of 1951 he braced himself on the threshold of Nashotah House, an Episcopal seminary in Nashotah, Wisconsin, about 35 miles from Milwaukee. This time the door opened wide at his knock. He was to be ordained three years later.

At the close of his second year he received an unexpected bonus. He went abroad. Actually another door was opening, but he couldn't know that. A friend who was to have accompanied a group of boys and girls to England as assistant chaplain chose to go to graduate school instead. Pierson was the substitute.

"Off I went," he says. "It was tremendous. We sailed on the Cunard's Georgic, not exactly the flagship of the [fol. 442] fleet. It had spent some months on the bottom of the Suez Canal during World War II—and looked it."

But the trip was idyllic. Pierson, six feet two, with cherubic features, was not much older than his 22 charges, all of whom were volunteering to serve that summer as unpaid social workers in London's East End settlement houses. Every afternoon he called them together for a



20-minute conference, which was nearly the whole of his official duties.

"They were really very responsible kids," he says. "I didn't have to do much chaperoning. They stayed out of trouble."

One of the three girls was a fair-haired, reed-slim Wellesley sophomore. Her name was Ann Clark Rockefeller.

Back in Eagle, Bob Pierson's parents almost at once had intimations of romance.

"The first letter just mentioned that Ann was in the group," says Donald Pierson. "The second letter said a little more about her and the third letter a lot more. Finally he began to report everything she said and everything she thought and everything she did."

"It was obvious," says Mrs. Pierson, "that he was in love."

Pierson was assigned for the summer as an assistant at All Saints Church in London's East End. He organized his chores so that he could escort Ann on occasional sight-seeing tours.

"Several of us took some trips together," he recalls. "We [fol. 443] went up to Edinburgh for the music festival, for instance. I got to know Ann better. We found a lot of our interests were the same."

They returned together on the Georgic. Marriage had crossed Bob Pierson's mind, but the implications of the Rockefeller prestige gave him pause. He is inclined to think Ann had a comparable hurdle to overcome before accepting the burdens that are part of a clergyman's life.

"Ann came into the Episcopal Church after we met," Pierson says. "I frankly don't know what she was before. I don't know if she knows. She was Protestant."

"The question of whom I marry, of what thoughts go into the preparation for marriage—they're all part of a whole. I argue that what I do, I do because of what I believe. I don't belong to the school that says, 'Don't worry about beliefs—it's action that counts.' Ann feels the same way. And our marriage had that kind of rational basis."

"We took all the facts into account. In other words, going far deeper than emotions but not leaving emotions out—if it seems right, why, then, it is right."

Before the engagement was announced, Ann's mother was entertained by the Piersons in their white-pillared Victorian home, which sits with curious formality amid the flat, isolated fields.

"I couldn't let my daughter visit people I didn't know," said Mrs. Rockefeller. "Don't you think I'm right?"

[fol. 444] "We would have done the same thing with our daughter," Mrs. Pierson assured her.

"The first time Ann visited us," says Mrs. Pierson warmly, "she made her own bed before she came downstairs. We couldn't keep her out of the kitchen. She wanted to help. And she never primped.

"Sometimes she'd kick off her shoes and curl up in an old tapestry chair. That one over there. It was all faded and worn. It's been recovered since. I used to worry about what Ann would think of the upholstery, but she never seemed to mind."

Father Pierson, having finished his seminary training, found his first job in New York City. "It was a summer project at St. Margaret's Parish in the Bronx," he says. "I kind of herded the little kids around, trying to keep them off the street as much as possible."

He had been trying for two years to be assigned as a missionary, and after the steaming summer in New York spent several weeks at a Boston monastery, hopefully preparing for a post in Japan. But when the next door opened it was not in the Far East but back in the Bronx.

"Out of the clear blue sky," he says, "I was offered a position as assistant at St. Paul's Episcopal Church, just two parishes north of St. Margaret's."

Father Pierson, his missionary ambitions submerged, joined the staff of St. Paul's in the fall of 1954. In March [fol. 445] he was advanced to priest-in-charge. His first

congregation was predominantly Negro, with a high percentage of West Indians. In his three years there the young minister encountered all the complexities of a changing neighborhood.

"I think my attitude on integration matured at St. Paul's in several ways," he says. "I learned at first hand what books had told me. I'd never had a great deal of contact with people other than those in my own tight little circle. Yet I knew intellectually that people are basically the same. At St. Paul's I learned this to be a fact through experience."

He acquired, he says with a grin, a "way-out" reputation in dealing with the various elements within the parish.

"We had a Puerto Rican influx in the neighborhood. In order to remain consistent with my policy that people are the same, I welcomed the Puerto Ricans on an equal basis. And I ran into opposition from some of the Negroes.

"So we had a big battle at one parish meeting. The parishioners decided they didn't want any Puerto Rican to do social work among them. And I was announcing I'd hired a Spanish worker. I was kind of mean that day. I lashed out at them. I told them I was surprised at them for having such an attitude. Well, we got the Spanish worker."

He chuckles suddenly. "But they were awful mad at me. For most of the three years I was in that parish, people [fol. 446] were mad at me most of the time, I think."

Like most of Father Pierson's depreciatory self-appraisals, this one is grossly exaggerated. He has a habit of ignoring his victories.

On June 25, 1955, two years after the round trip on the Georgic, Ann Rockefeller, 20, became Mrs. Robert Laughlin Pierson. The ceremony was performed by the Right Reverend Charles Francis Boynton, Suffragan Bishop of the Diocese of New York, at St. Paul's.

"All the parishioners were invited," Father Pierson explains. "We wanted it that way. A marriage is basically a public ceremony."

"The senior warden took great pains to see that the church was in tiptop shape. The place was so spruced up you wouldn't recognize it. I think they all enjoyed the wedding. The church was full."

The bride, in a princess gown of taffeta, wearing her maternal grandmother's lace veil, was given in marriage by her father, then special assistant to President Eisenhower. Her sister Mary was maid of honor; Pierson's brother Don was best man. A full complement of Rockefellers and Piersons attended, beaming appropriately.

As its single concession to the press the young couple, well matched in youth and grace and height, posed for photographs outside the church.

A reception—"a little less sacramentally oriented," observes Father Pierson good-naturedly—was held afterward [fol. 447] at the Rockefeller Pocantico Hills estate near Tarrytown, New York, where Ann Rockefeller had made her debut in 1952.

There too the parishioners from St. Paul's were welcome. Don Pierson, Jr., and Ann's brother Michael, who disappeared a few months ago on an anthropological expedition in New Guinea, provided a shuttle service for guests in need of transportation.

Ann Pierson moved into the St. Paul's rectory, where her husband had been living since autumn. "It was a kind of old, beat-up place," says Father Pierson. "Three floors. Ann liked it very much. We had a kind of very interesting setup. We brought in strays from all over.

"We had a fellow come down from Boston who stayed with us awhile and worked as a sexton. Then we had another man come up from the Bahamas who was thinking about studying for the priesthood.

"For a while we had an older woman who came to us from a mental hospital. She'd been ready to be released, but there wasn't anybody that would take her, so we brought her in.



"There were usually six or seven adults in the house, plus a great gal named Sue, who did most of the cooking. Two of our children, Clare and Joseph, were born while we lived at the rectory. And my wife was going to Barnard, finishing her senior year so she could go back to Wellesley and get her degree."

The former Ann Rockefeller had slipped effortlessly into [fol. 448] the role of Mrs. Pierson. Straightforward, unpretentious, she had none of the affectations that some members of the congregation had both expected and feared.

As 1957 inched its way out, Pierson accepted a bid to join in creating the Christ the King Foundation in Evanston, Illinois. "We planned," he says, "to prepare our church for re-entry into the world of education by starting a community of scholars, all members of the Episcopal Church, coming together, representing a number of different disciplines, doing some basic thinking and coordinating to evolve a philosophy of education."

Pierson left St. Paul's on December 31st. Although amiably disposed to emphasize the friction between himself and members of his congregation, he nevertheless concedes that "I've kept a lot of good friends from that parish." Typically, he doesn't mention that he was presented with a plaque before his departure by the Adult Council of Claremont Center in the Bronx in recognition of his community activities while he was priest at St. Paul's.

Pierson remained in Evanston as vice-chairman of the Christ the King Foundation until its demise last May. His disappointment is still vivid at the Episcopal Church's failure to provide funds for an institute on land made available to the foundation by the University of Chicago.

"One of my last acts was to rent an apartment we own out [fol. 449] there, the apartment we lived in, to a Negro family. I think it's the first time an apartment house in a white area of Evanston has been integrated. It's taken some working out. We've had protests and meetings. But

no rocks were thrown and there's been no exodus of the whites."

It was just as the foundation was expiring that he got a letter from Atlanta, Georgia, headquarters of the Episcopal Society for Cultural and Racial Unity, an organization of fairly recent vintage dedicated to "encouraging men to respond positively to God's call for unity in the Church." Pierson had been recruited into ESCRU while he himself was trying to recruit a friend for work in the Christ the King Foundation.

The letter proposed a pilgrimage through the South for Episcopal priests "in an attempt to build up communication with their Southern brethren and to examine the facilities and see what is being done to alleviate the problems of segregation that are the concern of the entire Church."

For Pierson this had the significance of another open door. "It seemed to me that I had no choice but to go," he says. "I didn't have a job, you see. I sent in my application."

Only then did he inform his wife of what he had done. "I didn't want to make too much of an issue of it," he says whimsically, "because I knew it would come up again." [fol. 450] Ann Pierson, possibly with the same thought in mind, at the time remarked only, "That's fine," and then proceeded to blot out the entire episode.

And so at the end of August, while they were holidaying in Maine, Father Pierson had to juggle his wife's memory after ESCRU had sanctioned his application.

Breaking the news, his voice elaborately casual, he had said, "Well, I've been accepted."

"Accepted for what?" his wife asked.

"Accepted for a Freedom Ride." He supplied the details as matter-of-factly as he could, aware that her enthusiasm for his civil-rights crusade was considerably tempered by the physical risks involved.

"You don't sound very excited about it," was his wife's comment.

"Well," said Bob Pierson, "I'm not."

"Don't you want to go?"

"No," said Pierson quietly.

"But of course it wasn't a question of whether I wanted to go or not," he explains today. "It was a thing that had to be done. I was between jobs and I really didn't have any excuse for not going." The laughter lines around his eyes begin to crinkle. "There was no twist of fact that I could make that would justify my saying I had to stay home [fol. 451] and provide for my wife and children. My wife wasn't going to starve. My in-laws could certainly afford to keep Ann and the children while I went on a prayer pilgrimage—just as many other in-laws would be keeping their families under the circumstances.

"I was not eager to go," he admits frankly, "because I have an innate fear of the unknown. I'm basically not an adventurer. But then, I don't think there was an adventurer on that pilgrimage. There wasn't a single rabble-rouser. There were no wild-eyed idealists. We were all just sort of fairly down-to-earth, business-like people."

While Ann Pierson never actively opposed her husband's joining the pilgrimage, she did question his decision several times. "She never really asked me to prayerfully reconsider," Bob Pierson says. "It was something she knew I felt strongly enough that I should do. But she wanted to sort of take a pulse now and then to see if my mind had changed."

But his mind hadn't changed.

A few days after his conversation with his wife, Father Pierson spent the weekend with his parents and his brother in Eagle. "They wanted to know what I was going to do next," the clergyman recalls. "I said I was going down to New Orleans."

"They said, 'What are you going to do down there?' I said, 'I'm going on a Freedom Ride.' They thought I was joking. And I knew that they thought I was joking. But I said no more about it." On September 11th, 28 Episcopal

[fol. 452] priests converged on New Orleans. Six were Negro; 22 were white. In the evening the clergymen were briefed on the theory behind nonviolence and its practical application. The speaker was Dr. Martin Luther King's associate, the Reverend Wyatt Walker.

"We were somewhat apprehensive," Pierson admits. "Walker told us what possibilities to expect. He had a couple of husky guys with him to give us a demonstration of what might happen. What you're supposed to do when somebody comes at you with a chair. You're not supposed to raise your hand in self-defense because that constitutes possible violence. It might look as if you were attacking him. You just duck. They told us things were pretty quiet in Jackson and that there shouldn't be any trouble. But if there was, whatever you do, don't try to hit back. So that was that."

That was Monday. On Tuesday morning the pilgrims piled into a chartered bus en route to Tougaloo, Mississippi, where they would be housed that night in a Negro college, Tougaloo Southern Christian. At noon they halted in McComb, Mississippi, to rest. They located an Episcopal church and filed in, Negro and white, for midday prayer.

"It was a narrow escape," says Father Pierson. "As we filed in a police car came by, stopped and looked us over. Then the cops went over to our bus driver and asked him what was going on.

"I can imagine what the people in Jerusalem felt like [fol. 453] when they were under siege. They were inside the walls; they couldn't get out. That's the way we felt.

"We asked the bus driver later what had happened. He said, 'Well, they came over and asked what you were doing. I told 'em I guessed you were going to say prayers.' The cops hung around awhile. But they let us alone."

The bus lumbered on to Tougaloo without further incident. "The college had been 'integrated' by the admission of two white students, former Freedom Riders who had been arrested in Jackson and then returned to enter Tou-



galoo," says Pierson. "We found the faculty most impressive."

That evening the 28 pilgrims divided into three groups, the first heading for Sewanee via Jackson, the second leaving directly for Sewanee and the third going on to Detroit.

"We intended to cut a swath through the nation from the Gulf Coast to the Great Lakes," Pierson explains. "Our pilgrimage was to begin in protest and end in protest. The original itinerary covered New Orleans, Jackson, Sewanee, Dearborn and Detroit. And there was ample room for protest everywhere."

Pierson was with the 15-man Jackson party, which was to make a side-trip to the segregated Trailways bus terminal in that city, where they hoped to have an integrated lunch before boarding their bus. Early Wednesday morning the clergymen set up a table as an altar in the plain, [fol. 454] rather homelike chapel at Tougaloo College and celebrated Mass there.

After breakfast Father Pierson telephoned Seal Harbor and spoke to his wife. He was gratified to find her "quite collected." It is not unlikely that she was somewhat calmer than he at that moment, since she had not been listening, as he had, to the Jackson radio, which was announcing that the clergymen were expected to arrive in town soon.

Shortly after 11 A.M. their luggage was loaded into taxis.

"We integrated the cabs," says Father Pierson, laughing. "There were three taxis with five men in each, one Negro to a taxi. The jitters descended upon us, all at once. It was only a twenty-minute ride to the bus terminal in Jackson, but we were so tense that it seemed more like two hours.

"Nobody talked very much. We didn't know what was going to happen. We arrived at the terminal, got out of the cabs and walked in. We had been afraid that everybody in Jackson would be there. But everybody wasn't there. In fact, there were few people there. And they never came near us."

It was 11:30 A.M.

The ministers strode toward the lunchroom. Six of them had entered it when a patrolman appeared. He ordered them to come back out of the lunchroom.

[fol. 455] "We all held up our tickets," says Pierson. "We said: 'We want to eat lunch. We're interstate travelers. We're on our way to Chattanooga. We're not disturbing the peace. We're law-abiding citizens.'"

"The patrolman said: 'You understand my orders? Move on.' And we said, 'We will move on as soon as we have a sandwich and a cup of coffee.' And the cop said, 'Do you understand that I'm asking you for the third time to move on?' We said, 'Yes, we understand.' And the patrolman said, 'You're under arrest. Wait here.'"

It was 11:35 A.M.

Only five minutes had passed since the 15 ministers had climbed out of their cabs. Once more they waited. And, waiting, they prayed.

"Then," Pierson resumes, his voice creamy with sarcasm, "kindly, genial ole Cap'n Ray of the Jackson city police—Captain J. L. Ray, the 'fantous' man who had arrested three hundred and seven Freedom Riders by then—came in. Hands on hips, he said, 'Now, I'm tellin' you, men, there won't be any trouble here. I'll get you on that bus. There won't be any trouble if you just follow me.'"

"We said no, we were going to have lunch. We said again, 'We're interstate travelers.' And then we all held up our tickets. It hadn't been rehearsed, but we knew that we had to establish without any question that we were traveling from one state to another and therefore legally had the [fol. 456] right to use the bus facilities. There must have been fifteen tickets held up right in front of Ray's face."

"Later, in the courtroom, Ray said he never saw any tickets. And he said the 'crowd' was in an ugly mood. Why, there was no crowd. There were, at the most, thirty-five people in the terminal, and they were all standing at the far end.

"Captain Ray said, 'Now, I'm tellin' you, we don't want any trouble.' And we told him we didn't intend to give him any trouble. And he said, 'You have to move on.' He said it three times. And then he said, 'You're under arrest.' Then the paddy wagon came, we were packed into it and hauled off to jail."

The Jackson jailers had grown accustomed to the ways of civil-rights partisans. The new inmates were courteously received as the first all-clergy group.

"The jail was sort of like a Y.M.C.A. with bars," says Father Pierson. "It was nicely ventilated and clean, with almost no cockroaches. Just waterbug-type things."

The 12 white clergymen were placed in one cell, the three Negro clergymen in another just down the corridor. Each of the prisoners was permitted one telephone call. It was then Pierson telephoned his whereabouts to his wife. "We weren't even allowed to get on the bus," he told her wistfully. While he talked the guards stood around and listened. [fol. 457] Later Ray said reproachfully to the pilgrims, "Now, you men knew you were going to be jailed, didn't you?"

"Well, we look at it this way, Captain Ray," Pierson retorted. "Someday the bus station here is going to be integrated. And you know that as well as we do. We just thought that maybe the day we were there would be the day of integration."

Time passed slowly for the pilgrims. They were permitted to have their luggage brought into their cells. Since one of the priests had his Mass kit with him, they conducted communion services daily. They said morning, noon and evening prayers. They had their meals and had naps. And they had free time—too much.

"We offered to paint the cell for them," Pierson says. "It had been marked up by prisoners for years back. They said, 'No, we don't want you to do that.' We asked for some brooms and mops. The jailer said, 'No-oo-o, we don't want you to do that either.' We asked why. The jailer said, 'We got niggers to do that.'"

Pierson's mouth twists with distaste.

On the whole, Jackson treated its captive visitors politely, even deferentially. Negro trustees—violating the jail rules to do it, but apparently ignored by officials—ran messages between the white and the Negro ministers, bought them candy bars, plied them with instant coffee. The two cells communicated by shouting back and forth when trustees were unavailable.

[fol. 458] On Friday, September 15th, two days after the arrest, there was a break in the routine. The pilgrims were marched downstairs for a hearing before Judge James L. Spencer. Carl Rachlin, chief counsel for CORE (the Congress of Racial Equality), and a local attorney, had consented to represent the defense.

When the Reverend John Crocker, Jr., of Providence, Rhode Island, took the stand to outline the ministers' objective in coming to Jackson, the judge commented, "It seems to me you're getting into more of a sermon than an answer."

Ray testified for the prosecution. "Genial ole Cap'n Ray made his statements," says Pierson. "He said there was a crowd in the terminal and the crowd was dangerous. We were found guilty."

Judge Spencer remarked that it was "especially grievous" for him to pass sentence because the defendants were ministers of his church. But pass sentence he did: four months and \$200.

After two hours and 20 minutes the pilgrims were led back to their cells. They occupied themselves with writing letters, singing hymns, composing folk songs, formulating statements and resting rather gingerly on their steel-plate bunks.

Meanwhile, at Seal Harbor, telephone wires and TV aerials had been blown down by a storm, so that Ann Pierson remained ignorant of the sentence until she was able to communicate with Father Pierson's parents a day or two later.

[fol. 459] Mrs. Pierson says, "Ann telephoned us to ask



what we knew about Bob. We told her we'd just heard he would be in jail for four months. She said, 'Oh, my goodness! Four months. . . .'

By the sixth day, Tuesday, September 19th, the Episcopal Church had raised some \$6,800 for bail, not quite enough to post a \$500 bond for each of the 15 clergymen. But two of them, both prison chaplains from Chicago, volunteered to remain behind bars as long as necessary. "They had a long, long stay—until the 30th," says Pierson. "But it was a point of interest with them to study prison conditions from the inside."

The other 13 pilgrims trooped outdoors. "We were delighted," says Father Pierson simply. Standing on the jail-house steps, he read a statement to the assembled reporters for all 15 ministers. Many people, Father Pierson said, had found it difficult to understand the purpose of the group's action, and he wanted to explain that the prayer pilgrimage had been undertaken "to testify to the nature of the Christian Church as a fellowship, grounded in one Lord, within which there is no place for separation by race, class or culture."

As priests, he said, the group could not conscientiously avoid situations in which "segregationist laws operate contrary to the law of the land." He said the group had planned to protest discrimination in the North as well as in the South, and that the State of Mississippi, by preventing completion of the pilgrimage, had "focused upon [fol. 460] its own failures the attention which otherwise might have been diverted to failures elsewhere." And he closed with an appeal to the "consciences of Christians everywhere" to "banish all traces of racial segregation and discrimination from the Church and from all parts of the land."

Then the clergymen enjoyed the first fruits of release—telephone calls to their families. In Atlanta they held a press conference, spent the night at a hotel and finally, only one day late, flew to Detroit for the 60th General Convention

of the Episcopal Church. There Ann Pierson joined her husband.

Back in New York now, Father Pierson has a new job. He is assistant director of the American Church Union, at 347 Madison Avenue, a voluntary fellowship of clergy and laity dedicated to the promulgation of a better understanding of the "ancient Catholic heritage" of the Episcopal Church.

Pierson, the initial shakedown period over, is just beginning to settle down. He has moved his family into a newly rented home in Westchester.

The trial in Jackson early in May means a major interruption in his work and in his life. In Wisconsin his mother muses, "Do you think he is sorry he went on the prayer pilgrimage?"

Says the Reverend Robert Laughlin Pierson: "Sorry? No! I certainly would do it again." ... The End

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[fol. 461] Mr. Watkins: No further questions.

Mr. Rachlin: No further questions.

The Court: You may stand aside, Reverend.

(Witness excused)

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JAMES P. BREEDEN, called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Rachlin:

Q. Do you mind telling us what your home is?

A. My home is 11 Akron Street, Roxbury, Massachusetts.

Q. Briefly, will you tell us what your education is?

A. I was educated in public schools in Minneapolis, Minnesota. I went to Dartmouth College, where I received my BA Degree, and to Union Theological Seminary, Bachelor of Divinity.

Q. Will you tell us when you were ordained as a priest of the Episcopal Church?

A. I was ordained a priest in December, 1960.

Q. Do you serve any parish at the present time?

A. Yes, at St. James Episcopal Church in Roxbury.

Q. By the way, are there both whites and Negroes at this parish church?

[fol. 462] A. There are, yes.

Q. Who is the bishop of the diocese of Massachusetts?

A. The bishop is Bishop Anson Phelps Stokes, Jr.

Q. And is there a co-adjutor bishop?

A. There are two suffragan bishops.

Q. Two suffragan bishops?

A. That's right.

Q. And is one of those bishops a Negro?

A. One of them is a Negro, yes.

Q. I take it you are? Would you state that for the record?

A. That is right.

Q. Now, Father Breeden, was there an occasion when you were in Jackson, Mississippi on or about September 13, 1961?

A. There was.

Q. Can you tell us whether you had occasion to be in the vicinity of the Continental Trailways bus station in Jackson a few blocks from this courtroom on that day?

A. I did have such occasion.

Q. About what time was it when you arrived?

A. About 11:30 A.M.

Q. Were you alone or in the company of others?

A. I was in a company of 14 other Episcopal priests.

Q. Was Mr. Morris, one of the plaintiffs here, one of them?

[fol. 463] A. He was.

Q. Was Father Breeden one of them?

A. Father Pierson?

Q. Father Pierson. Sorry.

A. He was.

Q. Was Father Jones one of them?

A. He was.

Q. Do you recall approximately where you got out of your vehicles to enter the station?

A. Yes. It was about 25 yards from the entrance of the station in the driveway to the left as you face the station.

Q. Did all of you walk directly to the entrance of the station?

A. Yes, we did.

Q. Approximately how long did it take you?

A. I would guess between half a minute and a minute.

Q. Did you happen to notice whether there were any substantial numbers of people who followed you into the station?

A. To my observation, no one followed us into the station.

Q. Now, do you recall whether you were amongst the first of the 15 or in the middle of the group of 15 or toward the end of the group?

A. I was one of the first to enter the station.

Q. You were one of the first. In your own words, tell us [fol. 464] exactly what happened and where you went as you entered through the door of the Continental Trailways bus station.

A. I with several others who were immediately around me entered the station. As I recall, the first thing I saw were two police officers standing a few feet from the entrance. We—

Q. Do you see those police officers in court today?

A. Yes, I do.

Q. I wonder if you could indicate them. . .

A. They were the two officers at Chief Ray's right at the moment.

Q. All right. Indicating Officer Griffith and Officer Nichols?

A. That's right, yes.

Q. Two of the defendants in this case?

A. That's correct.



Q. Please go on.

A. There were several other people in the station. I would guess about 15 or 20, no unusual number. We turned to the left and walked immediately to the restaurant area. I and several others entered the restaurant, and I believe I was about to pull out a chair to sit down when I heard a voice saying, "Youall come out of there."

Q. Did you do that?

A. Yes.

[fol. 465] Q. Where did you go?

A. I went just to the entrance of the restaurant, and there were two officers there, the two previously indicated. One of them said, "Youall will have to move on." Several in the group, myself included, stated that we were interstate travelers, that we wanted to eat before catching our bus. The officer repeated that we would have to move on. We again repeated our protest. The officer then said, "Do you understand my order?" and we said, "Yes," and then he said "You're under arrest."

Q. Now, two questions: One, did you have tickets for any destination, and, what was the destination?

A. Yes, we all had tickets for Chattanooga, Tennessee.

Q. And, secondly, at any time did either of the two officers—either Officer Griffith or Officer Nichols—indicate to you or tell you or any of the others what you were doing that was wrong?

A. As far as I recall, no.

Q. Please continue. What happened after that?

A. We gathered in a group and said together the Lord's Prayer and another prayer. One of the officers went to the telephone. I can recall that I turned aside to the small counter there in order to get a package of matches and [fol. 466] asked the girl for some matches, and she turned and walked away from me—

Q. Somebody behind the counter?

A. Behind the counter, yes. So I asked one of the other priests if he would buy the matches for me. And his skin color was apparently more acceptable, and he was able to purchase them.

Q. Now, at this time were you able to observe the demeanor of the other persons sitting or standing in the bus station?

A. Yes.

Q. How were the other persons in the bus station behaving at this time?

A. I noticed no unusual behavior other than, of course, the fact that attention was being centered upon us.

Q. Did anybody in the group in the bus station indicate by word of mouth or by gesture any hostility toward the group?

A. Not that I observed, no.

Q. Was there any unusual hubbub from the people in the station?

A. No, being from the North I would say there was considerably greater silence than there would have been on most occasions had 15 priests been in such a situation.

Q. Are northern bus stations usually noisier than southern bus stations?

[fol. 467] A. I've had very little experience at southern bus stations, but they're usually noisier than the Jackson bus station was at that time.

Q. Was the Jackson bus station quite quiet? Is that right?

A. Yes.

Q. Now, after reciting the Lord's Prayer, do you recall what took place?

A. It was only a few seconds afterwards that Captain Ray appeared in the station.

Q. Did you see him enter the station?

A. Not at the point of entry. I saw him as he approached our group.

Q. Well, did he walk directly toward you or did he stop?

A. As I recall, he walked directly to us.

Q. Did you observe whether he spoke to any of the people in the station?

A. My recollection is that he spoke to no one except our group.

Q. And I take it he didn't speak to either Officer Griffith or Officer Nichols? Is that correct?

A. I don't recall his doing so.

Q. Did he ask anybody in the station other than yourselves to leave the station?

A. No.

[fol. 468] Q. By the way, did either of the two officers, to your knowledge, ask anybody in the station to leave the station?

A. They did not.

Q. Please continue. What happened then when Chief Ray, then Captain Ray, came over to you?

A. He said to us that we would *haveto* move along. We said that we can't move along; we were interstate travelers; we had our tickets; our bus was soon to leave; and we wanted to have lunch before we left. We assured him that as soon as we did have lunch we would be happy to move on our journey. He said again that we would have to move along. Again, I believe, he ascertained that we understood his order. He said somewhere along the line that he would see that we got on our bus. And then, finally, he placed us under arrest.

Q. Did he at any time ever say to you what you were doing that was wrong or how you were violating any law of the State of Mississippi or ordinance of the City of Jackson?

A. Not to my recollection, no.

Q. What happened after that?

A. I'm not certain whether he made a phone call or not, but in any case, finally he asked us to accompany him to the lot at the rear of the station. We went there and [fol. 469] waited until the police wagon came, and then we got in the wagon and were taken to the city jail.

Q. Did you observe any unusual crowd in the back of the station before the patrol wagon got there?

A. No, there were a few people who were obviously curious about what was going on, but they stayed, I suppose, a good 25 or 30 yards away and made no—

Q. Did you observe any hostility among any of the people in the back of the bus station while you were waiting for the paddy wagon?

A. No. I recall one woman who was with a companion shaking her head and making some remark. I assumed that she was upset because we were being arrested—

Mr. Watkins: We object to what he assumes.

The Court: Yes, sustain the objection to what he assumes.

Q. Eventually the paddy wagon came along?

A. Yes.

Q. How long did you wait before it came along?

A. Maybe four or five minutes.

Q. Was this the first time in your career that you had ever been inside a paddy wagon?

A. Yes.

[fol. 470] Q. Did you go into this voluntarily, or were you under orders to go into it?

A. I was under orders.

Q. Were you taken with the others—where?

A. Taken to the city jail.

Q. Do you mind briefly describing what took place there?

A. We were together, the group of 15 of us, were together in a room. One by one our personal belongings were checked. We were fingerprinted, photographed, interrogated, and then finally sent, I believe, upstairs to a cell.

Q. By the way, were you sent into the same cell as either Father Pierson or Mr. Morris?

A. No, I was not.

Q. You were sent into a different cell?

A. Yes. Apparently the three of us who were identifiable as Negroes were to remain in one cell, while others were in another cell.

Q. Do you recall how many days later you had your trial before Judge Spencer?

A. September 13 was a Wednesday, I believe.—

The Court: —At this point, if you will keep in mind where you are, we will take a ten minute recess.

(Whereupon court was recessed for ten minutes)



[fol. 471]

## After Recess

Mr. Rachlin: I wonder if I might ask the court reporter what the last question and answer were?

(Last question and answer were read by the reporter)

A. Our trial was held on Friday of that week.

D. Do you recall who testified for the plaintiff at that time?

A. The then Captain Ray testified.

Q. Did anybody testify on behalf of the defendants in the case?

A. Yes, the Reverend John Crocker testified for us.

Q. Were you there when Judge Spencer passed sentence?

A. Yes, I was.

Q. Had you pleaded guilty or not guilty?

A. We pleaded not guilty.

Q. Do you recall what Judge Spencer did? How did he find?

A. He found us guilty of breach of the peace.

Q. Was there a sentence?

A. Yes, there was.

Q. Did you hear him pass it?

A. Yes, I heard him pass sentence.

Q. What did he say?

A. He sentenced us to four months in jail and \$200.00 fine each.

Q. Then what happened immediately after that?

A. We were returned to our cells.

[fol. 472] Q. How long did you remain in your cell thereafter?

A. We remained until Monday of the following week, I believe.

Q. I refresh your recollection by saying that Mr. Morris said it was Tuesday. Would that refresh your recollection on that?

A. Yes, I'm sorry. It was Tuesday.

Q. After you were released from jail, where did you go?

A. We went on to Atlanta.

Q. Was that your terminal point?

A. No. Then from Atlanta to Detroit, Michigan to the general convention of the church.

Q. Did you appeal your conviction passed upon you by Judge Spencer?

A. Yes, we did.

#### OFFER IN EVIDENCE

Mr. Rachlin: At this point I would like to offer similar records to those previously entered.

The Court: All right.

Mr. Watkins: No objection.

The Court: Let it be received in evidence and marked as an exhibit.

(Same received in evidence and marked as Plaintiff's Exhibit No. 5, which Exhibit follows here below:)

[fol. 473]

#### EXHIBIT PLAINTIFF #5

WITNESS BREEDEN

MAY 15 1963

STATE OF MISSISSIPPI  
COUNTY OF HINDS

I, H. T. Ashford, Jr., Clerk of the Circuit and County Courts and custodian of the said records in and for the said State and County, hereby certify that the foregoing 8 pages contain a true and correct copy of all the pleas and proceedings had and done in the case of State of Mississippi vs. James Pleasant Breeden in the County Court of the First Judicial District of said County in said State, and being case No. 12929.

Given under my hand and the seal of the County Court  
of said County and State this the 8 day of May, 1963.

H. T. ASHFORD, JR.  
Circuit and County Courts,  
Hinds County, Mississippi  
(SEAL)

/s/ ROBERT E. LILLEY D.C.

No. 12929

(Filed Oct. 2, 1961)

October 2, 1961

County Court Clerk  
Hinds County Courthouse  
Jackson, Mississippi

Dear Sir:

Section 1205 of the Mississippi Code of 1942 provides that "The Justice of the Peace, or Mayor, or Police Court [fol. 474] from whose judgment convicting of a criminal offense an appeal shall be taken, shall at once transmit to the Clerk of the Circuit Court the bond taken by him and a certified copy of his record in the case, with all the original papers in the case, as in appeals in civil cases."

In accordance therewith, I am enclosing herewith a certified copy of my record in the case of State of Mississippi versus James Pleasant Breeden, with all the original papers in the case to be dealt with according to law.

With very best regards, I remain,

Very sincerely yours,

/s/ JAMES L. SPENCER  
Police Justice and Ex Officio Justice  
of the Peace, City of Jackson, Hinds  
County, Mississippi

JLS:ssw

IN THE POLICE COURT OF THE CITY OF JACKSON, MISSISSIPPI

(Filed Oct. 2, 1961)

Docket No. 19

Page No. 404

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STATE OF MISSISSIPPI

VS. ■

JAMES PLEASANT BREEDEN

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CERTIFICATE

I, James L. Spencer, Police Justice and Ex Officio Justice [fol. 475] of the Peace, in and for the municipality of Jackson, Hinds County, Mississippi, do hereby certify that the attached and within:

1. Affidavit
2. Order for Cash Appeal Bond
3. Copy of Judgment
4. Notice from Sheriff
5. ....
6. ....

is a certified copy of my record in the case, with all the original papers in the case.

WITNESS MY SIGNATURE, this the 2nd day of October, 1961.

/s/ JAMES L. SPENCER  
Police Justice and Ex Officio Justice  
of the Peace, City of Jackson, Hinds  
County, Mississippi



Docket No. 19

Page No. 404

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STATE OF MISSISSIPPI

VS.

JAMES PLEASANT BREEDEN

---

## JUDGMENT

(Filed Oct. 2, 1961)

This cause this day coming on for trial and the defendant [fol. 476] being arraigned in court on a charge of violation of Section 2087.5 of the Mississippi Code of 1942, and having pleaded not guilty and the court having heard testimony and being of the opinion that the defendant is guilty, it is therefore considered by the court and so ordered and adjudged that the defendant serve a jail term of 4 months and pay a fine of \$200.00 and be committed to jail until paid.

ORDERED AND ADJUDGED, this the 15th day of September, 1961.

/s/ JAMES L. SPENCER

Police Justice and Ex Officio Justice  
of the Peace, Hinds County, Mississippi

Disposition of Defendant: Mittimus to Sheriff

IN THE MUNICIPAL COURT OF THE CITY OF JACKSON,  
FIRST JUDICIAL DISTRICT OF HINDS COUNTY, MISSISSIPPI

CITY OF JACKSON

VS.

JAMES PLEASANT BREEDEN

ORDER FOR CASH APPEAL BOND

(Filed Oct. 2, 1961)

This cause this day coming on to be heard on the oral motion of the defendant, James Pleasant Breeden by and through his attorney, for authority to post a Cash Appeal [fol. 477] Bond in lieu of a bond with sureties, and it appearing unto the Court that the defendant is a non-resident of the State of Mississippi and that no person, who has property within the State of Mississippi, is willing to serve a surety on his bond and that the defendant should be allowed to post a Cash Appeal Bond.

It is, therefore, Ordered and Adjudged that the defendant, James Pleasant Breeden, be and he is hereby authorized to post a Cash Appeal Bond of Five Hundred (\$500.00) Dollars and that the Sheriff of Hinds County be and he is hereby authorized to accept the same.

ORDERED AND ADJUDGED on this 18th day of September, 1961.

/s/ JAMES L. SPENCER  
Municipal Judge & Ex-Officio  
Justice of the Peace

Approved and agreed to:

/s/ (Signature illegible)  
City Prosecutor

/s/ JACK H. YOUNG  
Of Counsel for Defendant

[fol. 478] Cash bond is accepted because James Pleasant Breeden is a non-resident of the State of Mississippi and knows no person within the State of Mississippi who has property and is willing to make bond.

APPEAL BOND

(Filed Oct. 6, 1961)

12,929

STATE OF MISSISSIPPI )

COUNTY OF HINDS )

KNOW ALL MEN, That we James Pleasant Breeden Principal, and ..... and ..... sureties are held unto the State of Mississippi in the penal sum of (\$500.00) Five Hundred & No/100 Dollars, for payment of which we bind ourselves and legal representatives thereunto, jointly and severally and firmly by these presents, signed with our names this 18 day of September, A.D., 1961.

The condition of the above obligation is that the above named James Pleasant Breeden on the 15th day of September A. D., 1961, before the Municipal Court of the City of Jackson in and for the said county and State, was duly and regularly arraigned and tried on a charge of: Breach of the Peace and was then and there by the said Municipal Court adjudged "Guilty as Charged" and fined in the sum of (\$200.00) Two hundred dollar and four months in jail dollars and all costs. And the said James Pleasant Breeden [fol. 479] hath prayed an appeal of the said judgment to the next term of the County Court in and for said County and State.

Now, THEREFORE, If the said James Pleasant Breeden shall appear in person at the next term of the said County Court, and there remain from day to day and from term to term until discharged by law from the said charge, there

then this obligation shall be void, otherwise it shall be in full force and effect and binding on all parties, joint and several, therein named.

Given under our hands, this 18 day of September 1961.

/s/ JAMES P. BREEDEN                      Principal  
11 Akron Street                      Surety  
Roxbury 19, Massachusetts Surety

---

The foregoing Bond was filed and approved this 19 day of Sept. 1961.

J. R. GILFOY,  
Sheriff & Tax Collector  
Sheriff of Hinds County.

By /s/ FRED PICKETT  
Deputy Sheriff.



[fol. 480]

(Filed Oct. 2, 1961)

Honorable James L. Spencer  
Municipal Judge  
Jackson, Mississippi

Dear Sir:

Pursuant to Section 1204, Mississippi Code of 1942, as annotated I, the undersigned, Sheriff of Hinds County, Mississippi hereby advise you that I have taken a cash appeal bond from the following named individual, after having duly approved the same; that I have further turned over the said bond to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi.

I hereby notify you as Municipal Judge of the City of Jackson, Mississippi, that an appeal has been taken with regard to said individual and I direct you to send up all papers regarding said individual to the Circuit Clerk of the First Judicial District of Hinds County, Mississippi, as if the appeal bond had been filed with you, from whose judgment the appeal was taken.

*Name*  
James Pleasant Breeden

*Date of Bond*  
Sept. 19, 1961

Thanking you for your compliance with this request, I remain,

Sincerely yours,

/s/ J. R. GILFOY  
J. R. Gilfoy, Sheriff  
Hinds County,  
Mississippi

/s/ by FRED PICKETT D.S.

[fol. 481]

IN THE COUNTY COURT OF THE FIRST JUDICIAL DISTRICT  
OF HINDS COUNTY, MISSISSIPPI

No. 12,929

---

STATE OF MISSISSIPPI

VS.

JAMES P. BREEDEN

---

ORDER

This cause coming on to be heard in the County Court of the First Judicial District of Hinds County, Mississippi, on the original affidavit of the City of Jackson, Mississippi, said causing having been brought to this Court upon an appeal, the State of Mississippi, being present by its special prosecutor, J. A. Travis, Jr., and the defendant, James P. Breeden, being present in person and represented by his attorney, entered a plea of not guilty.

The regular jury for the week, composed of Roy C. Tillman, and eleven other men, having been duly empaneled and sworn to try this cause, heard the testimony and evidence offered by the State. The State then rested and the defendant made a motion for a directed verdict. The Court having considered said motion, after arguments of the cause, is of the opinion that said motion should be and the same is hereby sustained, It is, therefore,

Ordered and adjudged that the said motion for directed verdict should be and is hereby sustained, and that the defendant is now hereby finally and forever discharged. It [fol. 482] is further ordered and adjudged that the cash

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1

"Do you believe it is wrong for whites and Negroes to be together in a bus station?"

And your answer was—

Mr. Watkins: Just a moment, if it please the Court. I am going to object to that question as calling on this witness for a conclusion as to whether he believes it is right or wrong.

The Court: I will overrule the objection and let him give his opinion on that.

Q. And the answer was:

"I believe it is wrong for them to be together anywhere."

Do you remember that question?

A. I remember a question similar to that.

Q. And the next question was:

"Anywhere?"

And your answer was:

"Anywhere."

Do you remember that?

A. Seems like I do.

Q. Now, referring to Page 8 of your deposition, do you recall the following questions asked by me and the answers [fol. 486] given by you:

"Now, could you tell at the time they got out of the cabs whether there were any whites and Negroes together?"

And your answer was:

"I didn't pay that much attention to them."

Do you remember *that* question and answer?

A. Right.

Q. And further on that page, do you recall this question:

"Now, when they got out of the cab, did you see them do or say anything which you considered a breach of the law?"

And your answer was "No, sir."

Do you recall that?

A. Right.

Q. And then, next question:

"Now, at the time they got out of the cabs, what did you do?"

And your answer:

"I walked inside the bus station, started inside."

Remember that answer?

A. I walked back down the ramp and started into the bus station.

Q. Referring to Page 10 of your deposition, do you re-  
[fol. 487] member the following question:

"Did you observe a crowd of people on the ramp or near  
the ramp or near the taxicabs?"

Answer: "No, I did not."

Question: "You didn't see any?" "

Answer: "I didn't see any particular crowd."

A. I don't remember those questions and answers.

Q. Well, you have a signed copy. Turn to the top of Page 10 and see whether those are the questions and the answers given by you at that time.

A. That was mine on deposition, and still is.

Q. All right. Now, turning to the bottom of Page 12, do you remember the following question:

"They started to walk toward the restaurant?"

Your answer was:

"They started down toward the restaurant, and so Officer Griffith and I saw the trouble brewing, so he walked over there and stepped in front of them at the restaurant and wouldn't let them in the restaurant."

Do you remember *that* question and answer?

A. They came in the front door—



bond of, \$500.00, heretofore deposited with the Sheriff of this County, be refunded to the defendant.

ORDERED AND ADJUDGED on this 9th day of April, 1962.

/s/ RUSSELL D. MOORE  
County Judge

Q. In pursuance of your appeal, how many trips back to Jackson did you make?

A. Two.

Q. Was this from Boston?

A. One was from Minneapolis, Minnesota; the second was from Boston.

Q. Do you know offhand what the round trip expense from Boston to Jackson is?

A. Approximately \$200.00.

Q. Would you know what the expense was from Minneapolis?

A. Approximately \$175.00.

Q. Did you suffer any loss of earnings as a result of your being confined to the county jail?

A. No.

Q. Did you suffer any loss of income as a result of that?  
[fol. 483] A. No.

Q. Now, I will ask you the question I have asked all the others. Have you personally been the subject of any criticism or abuse as a result of your being confined in jail in Jackson?

A. Yes.

Q. Can you indicate the quantity of this?

A. I received a letter from Mississippi—

Mr. Watkins: We are going to object to that. The letter would be the best evidence.

The Court: I will overrule that objection. Of course, as to the contents of the letter, that would be the best evidence.

A. And I received a number of comments from persons with whom I'm immediately associated in my work in Boston.

Q. Persons associated with the Episcopal Church?

A. Some, yes.

Mr. Rachlin: I have no further questions.

Mr. Watkins: We have no questions of this witness.

The Court: You may stand aside, Father.

(Witness excused)

[fol. 484] Mr. Rachlin: Your Honor, at this time I would like to call as an adverse witness for the purpose of identifying certain statements made in the deposition, Officer Nichols, one of the defendants in this case.

The Court: Come around, Mr. Nichols.

D. A. NICHOLS, called as an adverse witness and having been duly sworn, testified as follows:

Cross examination.

By Mr. Rachlin:

Q. You are one of the defendants in this case?

A. I am.

Q. Were you present in the Continental Trailways bus station on September 13, 1961?

A. Yes.

Q. Were you there with Officer Griffith when 15 Episcopal clergymen were arrested?

A. Yes.

Q. Did you in your capacity as a police officer participate in the arrest?

A. I did.

Q. Now, do you recall, Mr. Nichols, being present in the office of Mr. Watkins when we took depositions?

A. I do.

Q. Do you recall—referring to Page 6 of your deposition, [fol. 485] do you recall my asking you this question:

Q. I'm sorry—

A. They came in the front door—

[fol. 488] Q. Excuse me. I'm asking—

The Court: What he is asking you, Mr. Nichols, was that question asked you and was that the answer you gave at that time?

A. It was.

Q. Referring to Page 17 of your deposition, do you recall the following questions and answers:

"Now, did you know what time they were coming to the station?"

Answer:

"We did not."

Question: "You did not."

Answer: "We did not."

Do you recall those questions and answers?

A. Where is that?

Q. Turn to about five lines down from the top of Page 17.

A. That's correct. Those are correct.

Q. Now, turning to Page 19, do you recall these following questions and answers:

"When you saw them come in, you saw whites and Negroes together?"

Answer: "I saw colored and white together."

Question: "Coming into the 'white only' part of the [fol. 489] station. Is that right?"

Answer: "That's right."

Do you remember that question and answer?

A. Those are correct.

Q. Now, turning to the bottom of Page 20, the very last line, do you remember this question and your answers, which are on the next page:

Question: "But you knew that colored people normally were not permitted to eat in the restaurant in the white waiting room? Isn't that right?"

Answer: "I did."

Question: "And you knew they were normally not permitted in the white waiting room?"

Answer: "I did."

Do you remember those questions and answers?

A. Those questions are correct.

Q. Now, turning to the top of Page 23:

Question: "Now, were you there when he placed them under arrest?"

Answer: "I just told them to move on, and they refused my order, and I asked them again, and they refused it. I asked if they understood my order, and they said they did. I asked were they going to obey it, and they said they [fol. 490] weren't."

Do you remember that question and that answer?

A. Correct.

Q. Now, turning to the bottom of Page 24, do you recall the following questions and answers:

Question: "Now, when you called and spoke to Captain Pierce, what did you say?"

Answer: "Chief Pierce."

Question: "I'm sorry. Chief Pierce. What did you tell him?"

Answer: "I told him that we had the ministers under arrest at the Trailways bus station and we needed transportation to bring them in."

Question: "Did you tell him there was an ugly mob there?"

Answer: "No, sir."

Question: "You didn't tell him that?"

Answer: "No, sir, not that I remember."

A. Those are correct.

Q. Turning to Page 28, the second line from the top, I ask if you remember the following questions and answers:

Question: "Well, then you never noticed that sign that said 'By Order of the Police Department'?"

[fol. 491] Answer: "No, sir."



Question: "You never noticed that?"

Answer: "At one time now I know they did have one of them 'By Order of the Police Department' but what they had at that time I don't know."

Question: "Well, if it said 'By Order of the Police Department' would that then be your instructions?"

Answer: "That would be my instruction."

Do you remember those questions and answers?

A. They are correct.

Q. Turning to Page 37 of your deposition:

Question: "Well, now, since Judge Moore has given his opinion, has it caused you to change your view as to whether it was proper to arrest these 15 clergymen?"

Answer: "If they did it again today, I would do the same thing I did that day."

Do you remember those questions and those answers?

A. That's correct.

Mr. Rachlin: I have no further questions of this witness.

[fol. 492] Mr. Watkins: We have none at this time.

The Court: You may stand aside.

(Witness excused)

Mr. Rachlin: Your Honor, at this time I wonder if I might ask Officer Griffith to take the stand.

The Court: Yes.

J. B. GRIFFITH, called as an adverse witness and having been duly sworn, testified as follows:

Cross examination.

By Mr. Rachlin:

Q. Officer Griffith, do you recall your deposition we took in Mr. Watkins office some time ago?

A. Yes, sir.

Q. I wonder if we could ask Mr. Watkins to give you a copy of it.

(Same is handed to witness)

Q. Were you an officer of the Police Department on September 13, 1961?

A. Yes, sir.

Q. Were you present in the Jackson City bus terminal when 15 ministers arrived?

A. I was.

Q. Did you participate with Officer Griffith in the arrest—  
[fol. 493] sorry—Officer Nichols in the arrest?

A. Yes, sir.

Q. I wonder if I could ask you to turn to Page 6 of your deposition. Do you remember the following questions and answers:

Question: "Do you recall about what time it was when you first saw the 15 Episcopal clergymen who were later arrested?"

Answer: "Around 11:25."

Question: "11:25. At the time you first saw them, were you and Officer Nichols standing together?"

Answer: "Yes, sir."

Question: "Can you tell us where in the station you were standing?"

Answer: "We were standing on the ramp in the back of the station which is on the south side, and we were standing on the east end of the ramp."

Do you remember those questions and answers?

A. Yes, sir.

Q. I ask you to turn to Page 11, if you don't mind.

Question: "Now, when they walked into the building, as you observed them, were they speaking in very loud voices?"

[fol. 494] Answer: "No, sir."

Question: "Did you hear them use any improper language?"

Answer: "No."

Question: "Did you see them threaten any people in the station?"

Answer: "Yes. By the manner in which they entered."

Question: "Well, will you describe what that manner was, please?"

Answer: "The people of the City of Jackson was in a tense mood at that time, and they came in as a group as they did and the other people in the Trailways bus station was in an ugly mood. You could hear some mumbling in their voices and expressions on their faces."

Question: "Now, what did they say or do which threatened anybody?"

Answer: "The ministers didn't actually make a threat. Just a—"

Do you remember those questions and answers?

A. Yes, sir.

Q. Do you remember the following questions and your [fol. 495] answer on Page 12?

Question: "Did you ask any of them . . ." referring to the other people in the station, ". . . to leave the station?"

Answer: "No."

Do you remember that question and answer?

A. Yes.

Q. The question on the same page:

"Now, you say those people as being in an ugly mood?"

Answer: "Yes, sir."

Question: "Did they say anything?"

Answer: "No."

Question: "These people did not say anything?"

Answer: "No."

Question: "Did they have threatening gestures?"

Answer: "Yes."

Question: "Did you arrest any of them?"

Answer: "No."

Do you remember those questions and answers?

A. Yes, sir.

Q. On page 16:

Question: "How many of the people in the station out-  
[fol. 496] side of the 15 ministers, how many of them would  
you say were mumbling?"

Answer: "Oh, I don't know. I just noticed maybe two  
or three of them mumbling, kind of saw them jabbering  
a little to each other."

Question: "Two or three of them."

Answer: "Off at a distance, something like that."

Do you remember those questions and answers?

A. Yes, sir.

Q. Now, on the bottom of Page 17, do you remember this  
question and this answer:

Question: "Would the trouble be caused by anything  
that the ministers said or did?"

Answer: "Just their presence there."

Do you remember that question and answer?

A. Yes.

Q. And going over to the top of the next page:

Question: "Their presence there, but not anything they  
said or did?"

Answer: "No, they didn't say anything."

Question: "The trouble would be caused by other peo-  
ple? Is that correct?"

Answer: "Yes."

[fol. 497] Do you remember those questions and answers?

A. Yes, sir.

Q. And at the bottom of the same page:

Question: "You thought that the people of the City  
of Jackson would attack ministers?"

Answer: "Yes."

Do you remember that question and answer?

A. Yes, sir.



Q. In the middle of Page 20, do you remember this question and this answer:

Question: "Then was it Officer Nichols who said to them, 'You're under arrest'?"

Answer: "No. I placed them under arrest."

Do you remember that question and answer?

A. Yes, sir.

Q. Do you remember on Page 22 the following question and answer, near the top of the page, third line down:

Question: "Their presence there and the citizens of Jackson not liking it?"

Answer: "Yes, sir."

Question: "It had nothing to do with the fact that they were a group of 12 white and three Negro clergymen?"  
[fol. 498] Answer: "No, sir."

Do you remember those questions and answers?

A. Yes, sir.

Q. On the bottom of Page 25 and the top of Page 26, the following:

Question: "It wasn't until they arrived in cabs that you decided to go into the bus station?"

Answer: "Yes."

Do you remember that question and answer?

A. Yes.

Q. Now, on Page 31—I stand corrected. I wonder if I could ask you to turn back to the bottom of Page 27. I omitted something which I wanted to include.

A. The bottom of 27?

Q. The very bottom of Page 27 and the top of Page 28, the following questions and answers:

Question: "Was there anything they said or did which might make you think that these 15 clergymen would commit violence upon you?"

Answer: "No."

Question: "You weren't worried about that, were you?"

Answer: "No."

[fol. 499] Question: "You weren't worried about them committing violence against anybody in the station either, were you?"

Answer: "No."

Do you remember those questions and answers?

A. Yes, sir.

Q. On Page 31, do you recall the following questions and answers:

Question: "Now, if a Negro walks in that part of the station, he is asked to leave? Isn't that right?"

Answer: "Not all the time, no. It is according to whether he violates any law or not."

Question: "It is according to whether he is violating the law?"

Answer: "Yes. If he comes in drunk or something like that, he is placed under arrest and carried out."

Question: "And if he is quiet and doesn't say anything to anybody, he will be allowed to stay?"

Answer: "It's according to how the crowd reacts."

Question: "Yes. So if the crowd reacts, then you will ask them to leave? Is that right?"

Answer: "Yes."

Do you remember those questions?

[fol. 500] A. Yes.

Q. Page 34, do you remember the following questions and answers:

Question: "Can you tell me any time, to your knowledge, when a Negro went in that part of the station when he had not been arrested?"

Answer: "Not to my knowledge, no."

A. (Witness makes no comment)

Q. I'm sorry, I never got for the record whether you remember that question and answer.

A. Yes, I remember.

Q. I ask you, Officer, to turn to Page 40, and do you recall the following questions and answers, fourth line down:

Question: "And Captain Ray came in?"

Answer: "Yes."

Question: "Did he ask you whether you had placed them under arrest?"

Answer: "No."

Question: "Did you tell him they were under arrest?"

Answer: "No."

Do you remember those questions and answers?

A. Yes, sir.

[fol. 501] Q. Now, Officer, may I ask you to turn to Page 46 of your deposition, about the middle of the page. Do you recall the following questions and answers:

Question: "Well, the crowd that you say was following them in the station, they didn't have any regular business in the station, did they?"

Answer: "Not that I know of."

Question: "Why didn't you ask them to leave?"

Answer: "We were concerned about the ministers at the time. We had determined that they might be the cause of violence."

Question: "Well, why didn't you—they weren't going to commit the violence, were they?"

Answer: "The ministers?"

Question: "Yes."

Answer: "I don't know."

Turn over to the next page, next to the very top line, and continuing:

Question: "Well, did they look like they were going to commit any?"

Answer: "No."

Question: "It was the other people who looked like they were going to commit violence? Is that right?"

[fol. 502] Answer: "Yes."

Question: "Well, why didn't you ask them to leave?"

Answer: "We had determined that the ministers was the cause of the violence if any might occur."

Question: "They would be the cause of the violence because they were standing in the station?"

Answer: "Because of their presence there."

Question: "Because of their presence in the station? Is that right?"

Answer: "Because they were there."

Do you remember those questions and answers?

A. Yes, sir.

Q. Do you remember the very last question and answer on the bottom of Page 49 and the top of Page 50:

Question: "Do you think it is wrong for whites and Negroes to come into a bus station together?"

Answer: "Yes."

Do you remember that question and answer?

A. Yes, sir.

Mr. Rachlin: I have no further questions of this witness.

Mr. Watkins: We have none at this time.

The Court: You may stand aside.

(Witness excused)

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[fol. 503] J. L. RAY, called as an adverse witness and having been duly sworn, testified as follows:

Cross examination.

By Mr. Rachlin:

Q. I am going to call you Chief Ray.

A. Either way will be all right.

Q. I am going to read, so you'll forgive me if I read it in the way it is in the record. It is not meant to demote you in any way.

A. That's all right.



Q. Do you mind turning to Page 60?

A. (Witness does same)

Q. (Reading) Question: "Chief Ray, both Officer Griffith and Officer Nichols weren't able to describe the sign in front of the white waiting room at the Trailways bus station. I wonder if you can tell us what it says. Can you recall?"

Answer: "Yes, sir. It says 'White Waiting Room Only, By Order of the Police Department.' I believe that is the wording."

Do you remember that question and answer?

A. I do.

Q. On top of Page 7, if you don't mind:

[fol. 504] Question: "So that was the orders then to Officer Griffith and Officer Nichols? Isn't that right? 'By Order of the Police Department, White Waiting Room Only'?"

Answer: "No, sir, not necessarily."

Question: "That was not their orders?"

Answer: "No, sir."

Question: "What did the sign mean?"

Answer: "That sign is there for people to use. In other words, they have a choice. It isn't against the law to go in either waiting room."

Question: "Well, don't you think if it says 'By Order of the Police Department' people might think they don't have a choice?"

Answer: "I believe that's what the court ruled and that's the reason of this change, but it was just for a matter of choice."

Question: "What was the choice if the sign read 'By Order of the Police Department'?"

Answer: "Well, people—in other words, people that chose to use that, they did and it's very—it is normal and people usually go by the signs."

Do you remember those questions and answers?

[fol. 505] A. I do.

Q. Now, Chief, please turn to Page 19, near the middle of the page. Do you remember the following questions and answers as given by you:

Question: "Let's get back to the point where you came into the station. Now, you described how you saw the ministers over near the concession and near the door to the restaurant, didn't you?"

Answer: "That's correct."

Question: "They were not saying anything at that time, were they?"

Answer: "No, sir."

Question: "And they weren't threatening anybody, were they?"

Answer: "Their being there had caused a threat."

Question: "What was there about their standing where they were that was a threat?"

Answer: "As I have already described, they were an advertised group, and I have already told you that has been almost a month since the Freedom Riders were there and people were back kind of peaceful, kinda', and of course, when this advertised group came out in the paper and through the radio, there was a tense situation again, and [fol. 506] they thought it was another movement of Freedom Riders. We had worked real hard to prevent any violence, and we didn't want to start again."

Do you remember those questions and answers?

A. I do.

Q. On Page 21, do you remember this question and answer:

Question: "Did you ask or did you station any officers on the sidewalk in front of the entrance to keep the entrance clear?"

Answer: "No, we didn't know where they were going."

Do you remember that question and answer?

A. Yes, sir, but may I add something? It's a lot of other questions prior to that.

Q. You will discuss that with Mr. Watkins then.

A. Good.

Q. I am asking you to turn to the middle of Page 24:

Question: "It was just their presence in the station that caused the trouble?"

Answer: "That is correct."

Question: "Nothing they said or did caused any trouble?"

Answer: "That is correct."

Question: "Just their presence?"

[fol. 507] Answer: "That is correct."

Do you remember those questions and answers?

A. I do.

Q. On Page 29:

Question: "Now, were you in any meetings with the mayor on this subject?"

Answer: "Yes. He told— You mean on this particular subject?"

Question: "Not on the ministers, but on the people arrested in the bus station."

Answer: "Yes."

You remember those questions and answers?

A. I do.

Q. Please turn to Page 33:

Question: "Now, when you came into the station, you didn't speak to any of the people in the station, did you?"

Answer: "No, sir."

Question: "So you didn't know for certain what was bothering them, did you?"

Answer: "Yes, I did."

Question: "How did you know?"

Answer: "Well, the focus point was the ministers over [fol. 508] in that corner."

Do you remember those answers and questions?

A. I do.

Q. Further on that page:

Question: "And you say you didn't speak to any of the people in the crowd?"

Answer: "No, I didn't."

Question: "Did you hear what they were saying?"

Answer: "No, I didn't."

Do you remember those questions and answers?

A. I do.

Q. I ask you to turn to Page 37, Chief, if you don't mind.

Question: "You say the crowd was in an ugly mood. You didn't ask any of them why they were in an ugly mood, did you?"

Answer: "No. It was evident to me."

Question: "Did you ask either Officer Griffith or Officer Nichols whether anything special had happened that you ought to know about?"

Answer: "I didn't."

Question: "You just assumed that they were the ones?"

Answer: "It was evident that that was it."

[fol. 509] Question: "Now, they didn't make any insulting or rude or obscene remarks, did they?"

Answer: "No."

Do you remember those questions and answers?

A. I do.

Mr. Rachlin: I have no further questions of Chief Ray.

Mr. Watkins: No questions at this time.

The Court: Very well, stand aside.

(Witness excused)

The Court: At this point, Gentlemen, we will take a recess until nine o'clock tomorrow morning.

Under the instructions I have heretofore given you, I will let you separate and be back at nine o'clock tomorrow morning.

(Whereupon the court was recessed until the following morning.)



Thursday, May 16, 1963, at 9:00 A.M. the trial was resumed.

JAMES L. SPENCER, called as an adverse witness and having been duly sworn, testified as follows:

Cross examination.

By Mr. Rachlin:

Q. Judge Spencer, I am just going to refer to various pages of your deposition and ask you whether they were the questions you heard and the answers you gave. There possibly may be one or two other questions, but it will be very brief, in any event.

May I refer you to Page 5 of your deposition given in Mr. Watkins' office, and I ask you to look at the following questions and answers:

Question: "And when was it you became a judge?"

Answer: "On July 1, 1958, I believe. I was appointed police justice and ex officio justice of the peace for the City of Jackson, Mississippi."

Question: "I take it that is not an elective job?"

Answer: "No, sir."

Do you remember those questions and answers, sir?

A. I do.

Q. I assume if I asked the same questions, you would give [fol. 511] the same answers?

A. That is correct.

Q. May we consider that applicable to all of these questions and answers?

A. That is correct.

Q. May I ask you to turn to Page 18 of your deposition:

Question: "And you heard him . . ." referring to Chief Ray, ". . . heard him testify both today and at that time that they didn't use any profanity or obscene language?"

Answer: "That is correct."

Question: "Nor did they say anything which should disturb anybody. You heard him say that too?"

Answer: "That is correct."

Question: "Nor did they, from his testimony, commit any of the common acts which we consider breach of the peace, like spitting on the sidewalk or being drunk or anything like that. There was none of that involved in this case?"

Answer: "None of the examples you mentioned, no."

You heard those questions and answers, Judge?

A. Yes.

Q. Now, may I ask you to turn to Page 20 of the deposition.

Do you remember these questions and answers:

[fol. 512] Question: "Was there any evidence in the record that they said anything or did anything?"

Answer: "In the bus station?"

Question: "In the bus station."

Answer: "No. Only such as was related by Captain Ray."

Question: "That wasn't disorderly in itself, was it?"

Answer: "No, sir."

You remember those questions and answers, Judge Spencer?

A. That's correct.

Q. Now, I ask you to turn to Page 21:

Question: "Suppose a police would make an unreasonable order. Does a citizen have a right to disobey that order?"

Answer: —

Mr. Watkins: — Just a moment. I am objecting to that question and any answer that may have been made to it. It involves a hypothetical question not involved in this case and calls on this witness for a legal conclusion.

The Court: Read the questions again, please.

Mr. Rachlin: Before I read it, may I just say one word, if you don't mind?

[fol. 513] The Court: Yes, sir.

Mr. Rachlin: This was the judge who presided over these plaintiffs here—defendants then. And I think what his position as a judge is goes to the heart of his position here as a defendant.

There were three questions, and I will read the series of questions without giving the answers, if you don't mind.

The Court: Just let me see it.

(Same is handed to Court)

The Court: You want me to read some questions before?

Mr. Rachlin: No, that isn't necessary. Just beginning with the pencil mark there.

(Court reads same)

The Court: Sustain the objection to that.

Mr. Rachlin: This goes to the very heart of the case.

The Court: This is incompetent; just an agreement between you and him up there as a judge. I sustain the objection to that, very clearly, because that is not competent. You were asking him to give an opinion which is up to this Court and jury to decide that.

Mr. Rachlin: No, I am sorry, Your Honor. That is [fol. 514] precisely not the fact.

The Court: I tell you, Mr. Rachlin, as I told you yesterday, I don't want to say anything in the presence of the jury other than to rule. So I sustain the objection.

Mr. Rachlin: Your Honor, I offer to make a—

The Court: Yes, you can offer it in evidence and let it be marked.

Mr. Rachlin: I offer the entire deposition in evidence.

Mr. Watkins: We object to that. He may offer the page or the questions, which he is now trying to put in and has been ruled out by the Court.

The Court: I believe under the Rules he is entitled to offer the entire deposition, but that part will be excluded because it is not competent, and it will not go to the jury; but if he wants to—

Mr. Watkins: My point is, Your Honor, that there are many other incompetent questions.

The Court: Well, I am going to rule upon each one of them and exclude those that are incompetent, if that's what he wants. Now, if he just wants to preserve that particular point there, he can offer that page and let the court reporter mark it and become a part of the record, [fol. 515] but it will be excluded—

Mr. Watkins: That is my point. He could have the court reporter mark any number of specific pages, but not the entire deposition.

The Court: If he desires to offer the entire deposition, as I recall it, the pretrial deposition of a party to a lawsuit may be offered by the plaintiff.

Mr. Watkins: For impeachment purposes only, Your Honor, if the witness is present.

The Court: Let me get that rule first.

Mr. Rachlin: I am going to ask to cross examine Judge Spencer now as an adverse witness, Your Honor. I think under the Rules I am permitted to do so.

The Court: Are you withdrawing your offer of that?

#### OFFERS IN EVIDENCE

Mr. Rachlin: No. At this moment, I offer this page, the series of questions and answers I showed to you.

The Court: All right. Let the court reporter mark the page.

(Pages 21 and 22 of the deposition were marked as Plaintiff's Exhibit No. 6, which Exhibit follows here below.)



[fol. 516]

## EXHIBIT PLAINTIFF #6 (PAGE 1)

WITNESS SPENCER

MAY 15 1963

Q. Suppose a police would make an unreasonable order. Does a citizen have the right to disobey that order?

A. I would think the citizen's proper procedure would be to obey the officer and later seek redress.

Q. But not to disobey the order?

A. I know I certainly wouldn't.

Q. But do you think, regardless of what you or I or Mr. Watkins might do, or anybody else might do, do you think that a citizen has the right to disobey an improper order of a police officer?

A. I would answer that— Are you speaking from a legal standpoint or just my opinion?

Q. I am speaking to you as a judge now. Suppose there was a case in which it was clear that the order of the policeman to move on was improper?

A. I will say that I have never researched the law on that point, but my opinion, without researching the law, (Plaintiff Exhibit 6, Page 2) would be that he should obey the officer.

Q. Regardless of whether the order is improper or not, he should obey the order?

Mr. Rachlin: In view of that, I will have to cross ex-[fol. 517] amine Judge Spencer as an adverse party.

The Court: Now, you offered that part of the deposition that you desired to introduce and withdrew your offer of the entire deposition?

Mr. Rachlin: That's right.

The Court: Very well. I will sustain the objection to that part of the deposition offered in evidence, and it will not be received in evidence, but the court reporter will mark

it as an exhibit and it will become a part of the record in the case.

You may now proceed.

(Mr. Rachlin continues)

Q. Now, Judge, what was the sentence you passed on the plaintiffs in this case? Do you recall?

A. The sentence of four months in jail and pay a \$200.00 fine.

Q. Now, I ask you to turn to Page 24 of your deposition. Do you remember the following questions and the answers you gave:

Question: "Now, you were the one who was the trial judge in many of these so-called Freedom Riders' cases?"

Answer: "Yes, sir."

Question: "In fact, you tried all of them, didn't you?"

Answer: "I believe so."

[fol. 518] Question: "Now, in the first cases you tried, what was the sentence that you passed? Do you recall?"

Answer: "In the first cases, there were suspended sentences, if I recall correctly."

Do you remember those questions and answers?

A: Yes, sir.

Q. By the way, how many of those so-called Freedom Riders' cases did you try?

A. I have never actually counted them, Mr. Rachlin. I hear other people in the courtroom talking about approximately 300. As far as actual trials are concerned, it would be a number much smaller than that because, by agreement of counsel, they would be tried in groups rather than individually. So of the 300, my estimate would be there were maybe some 50 trials.

Q. 50 trials, or approximately 300 people? Is that correct?

A. That would be a guess, Mr. Rachlin.

Q. And how many of them were acquitted?

A. I don't know—

Mr. Watkins: —If it please the Court, I am going to object to this. All of this is a matter of record.

The Court: Yes, sustain the objection.

Q. I ask you to turn to the bottom of Page 27 of your deposition.

[fol. 519] Question: "Well, now, you, of course, as a citizen of Jackson were aware of the police sign in front of the entrance of the station, weren't you?"

Answer: "No, sir, I wasn't. I'll say, frankly, that I don't think I've been in the bus station once in the last five years."

Question: "Well, you knew that Captain Ray had described that there was such a sign in front of the station?"

Answer: "Yes."

Question: "And you heard it repeated again, in substance, today? I don't recall if he used the same words, but in substance he said today what he said in the initial trial? Isn't that right?"

Answer: "Yes."

Question: "And that it said, 'White Only, By Order of the Police Department'?"

Answer: "He said there was a sign of some similar words. His exact words, I don't recall."

Question: "Yes. But in substance, what I have just described, in substance?"

Answer: "That is correct."

Question: "Well, now, if it's an order of the Police Department [fol. 520] to maintain white only, wouldn't it be wrong for a Negro citizen to go into that room?"

Mr. Watkins: Just a minute. We object to that question. It calls for a legal conclusion.

The Court: Yes, sustain the objection.

Mr. Rachlin: Your Honor, this is the judge who tried the case. We have got to know—

The Court: —I know who he is, and I sustain the objection. Now, you can offer it in evidence and let the court reporter mark it, and it will not be received in evidence but will be a part of the record.

Mr. Rachlin: Your Honor, I would like to make it clear that we are not re-trying the initial case.

The Court: I understand this whole thing, so let the record be complete there.

(Same was marked as Plaintiff's Exhibit No. 7, which Exhibit follows here below:)

EXHIBIT PLAINTIFF'S #7 (PAGE 1)

WITNESS SPENCER

MAY 16 1963

Q. Well, you knew that Captain Ray had described that there was such a sign in front of the station?

A. Yes.

Q. And you heard him repeat it again in substance today? [fol. 521] I don't recall if he used the same words, but in substance he said today what he said in the initial trial, isn't that right?

A. Yes.

Q. And that it said "White only—by order of the Police Department"?

A. He said there was a sign of some similar words. His exact words, I don't recall.

Q. Yes. But in substance, what I have just described—in substance?

A. That is correct.

Q. Well now, if it is an order of the police department to maintain white only, wouldn't it be wrong for a Negro citizen to go into that room?

A. I don't believe so. I cannot cite you any authority, (Plaintiff's Exhibit #7 (page 2)) and I never made a study of the cases because no such case has ever been presented to me, but I have a vague recollection that both the Supreme Court and the Interstate Commerce Commission have passed on that question. No case has ever been presented to me involving that question.

...



(Mr. Rachlin continues:)

Q. Now, Judge Spencer, you heard Captain Ray describe yesterday, and you heard him describe in the deposition, [fol. 522] and in Mr. Watkins' office, and you heard Captain Ray describe his testimony before you. Now, in each one of those situations, he told you what the sign was in front of the building, didn't he?

Mr. Watkins: I object to that on the ground it is improper to call on a witness to comment or to present to a witness the testimony of another witness.

Mr. Rachlin: I'm asking if he heard the testimony.

The Court: I will overrule that objection and let him answer if he heard the testimony.

A. Mr. Rachlin, I believe that in the trial in *minicipal* court you cross examined Captain Ray on that question, and I believe he did describe it at that time. In the taking of the depositions in Mr. Watkins' office, as you mentioned, I believe he described it at that time. Those are two instances I remember Chief Ray describing the sign.

Q. Weren't those questions read to him yesterday, and didn't he acknowledge that those were his answers again?

Mr. Watkins: He is asking what another witness testified.

The Court: Yes, sustain the objection.

Q. You were also present when the two other officers testified in the depositions and when they were here yesterday [fol. 523] day? Is that right?

A. Yes.

Q. When a policeman acts in pursuance of that sign, I take it he is acting on the order of the City of Jackson?

Mr. Watkins: Object to that as calling on the witness for a legal conclusion.

Mr. Rachlin: He is a judge. We are entitled to ask a legal conclusion of a judge.

The Court: Just a moment. I sustain the objection, Mr. Rachlin, because the fact that he was the judge is immaterial. It is a question of law for this court to decide now, and what his opinion is is of no evidentiary value to this court and jury and is incompetent.

Mr. Rachlin: Your Honor, I would like to be heard on this, because I think there is a great misunderstanding as to what we are trying in this case.

The Court: No, I understand thoroughly what we are trying.

Mr. Rachlin: But, Your Honor, if you will permit me, sir, we have to try his state of mind at the time he tried this case. We are not trying his conclusions as to whether they are sound or not, but what they were at the time he tried this case, whether under the circumstances, these [fol. 524] plaintiffs here got a fair trial.

The Court: His state of mind is immaterial in this case. He was a judge confronted with a serious proposition; and if he made an error, it's an error of judgment upon his part, for which there would be no responsibility against the judge and would throw no light whatsoever upon this lawsuit; so I sustain the objection.

Now, you have your question in, you have your answer, the man is on cross examination, and the record is complete.

Mr. Rachlin: He is being tried on two counts, Your Honor. He is being tried—

The Court: I understand, Mr. Rachlin. Now, let's don't quibble, because I have ruled and we will just lose time. I could send the jury out for you to state what you propose to show, because as to an adverse party, you don't have to state for the record in order to get a review as to what you propose to show. And I am perfectly satisfied that I am correct in my ruling.

Mr. Rachlin: I would like, Your Honor, to ask for the jury to leave the room for a moment so that I could state on the record the point of law I think is relevant at this very moment.

[fol. 525] The Court: I decline to do that for the reason that under the law of this circuit and the State of Mississippi you are entitled to the most favorable answer you could possibly get from a personal review, so there is no need for you to state it on the record and consume that much time. Let's go on.

Q. Page 37 of the deposition:

Question: "You know that Judge Moore disagreed with you, don't you?"

Mr. Watkins: We object to that—

Mr. Rachlin: I haven't finished the question.

Mr. Watkins: Please stop between the question and the answer.

Mr. Rachlin: Ill do that. Just ask me.

Q. (Continuing:)

Question: "You know that Judge Moore disagreed with you? You know that, don't you?"

Mr. Watkins: We object to that as immaterial.

The Court: Yes, sustain the objection.

Mr. Rachlin: Well, if he knows, he will have the right to test his memory.

The Court: I sustain the objection, Mr. Rachlin.

Q. Next question:

[fol. 526] "You know he reversed the conviction?"

Mr. Watkins: We object to that as immaterial.

The Court: Sustain the objection.

Q. Question: "Based upon his reversal, if you were presented with this case, would you convict the people again?"

Mr. Watkins: We object to that.

The Court: Sustain the objection.

Mr. Rachlin: All right. Please give the stenographer your Page 37. I'd like to have that marked.

Mr. Watkins: I object to the introduction of any questions other than those which he propounded to the witness

to which objections were sustained. There are other questions on the page other than those he propounded to the witness. My objection is based on the fact that he began with "You know Judge Moore..." The question above that is objectionable, which is a question which reads: (reads same).

Mr. Rachlin: Well, I can read them all. That's simple enough.

The Court: Just a moment. Do you object to the introduction of that page, Mr. Watkins?

Mr. Watkins: Yes, sir.

The Court: Sustain the objection.

[fol. 527] Mr. Rachlin: I would like to read the questions as an offer of proof and let Mr. Watkins object to each.

The Court: You will not read any more on this page. I have sustained the objection to the entire page.

Mr. Rachlin: I have an offer of proof, don't I? I can have them marked for identification, can't I?

The Court: The plaintiff having offered in evidence Page 37 of the deposition of the witness, Judge Spencer, and counsel for the defendants having objected to the introduction of the testimony on that page, the Court now sustains the objection, and it will not be received in evidence but will be marked as Exhibit 8 of the Plaintiffs and will become a part of the record, but not considered as received in evidence.

(Same was marked as Plaintiff's Exhibit No. 8, which Exhibit follows here below:)

**EXHIBIT PLAINTIFF'S #8 (page 37 only)**

**WITNESS SPENCER**

**MAY 16 1963**

Q. Now, how long have you lived in the City of Jackson?

A. I came back from law school in '47 and have been here continuously since.

Q. Do you know the people of Jackson moderately well?

A. I think so.



[fol. 528] Q. Do you seriously believe that under the circumstances described here that the citizens would have physically attacked fifteen members of the clergy?

A. Unquestionably, I think so.

Q. You know that Judge Moore disagreed with you, don't you? You know that, don't you?

A. No, I do not know that.

Q. You know he reversed the conviction?

A. I understand he reversed the conviction.

Q. Do you know that he reversed it on the grounds that the elements of the case weren't proved?

A. I don't know that. I don't know if any written opinion was given. All I know of that trial was what I read in the newspaper.

Q. Well, based upon his reversal, if you were presented with this case again, would you convict the people again?

A. Under the circumstances and the testimony which was given in the trial, I would.

\*\*\*

(Mr. Rachlin continues cross examination:)

Q. Now, Judge Spencer, when you were sitting in judgment upon the plaintiffs in this case and taking into account your knowledge of the statute that was involved at that time, can you tell us the circumstances under which a citizen [fol. 529] may refuse to obey an order of a policeman?

Mr. Watkins: Object to that.

The Court: Sustain the objection.

Q. Does a citizen ever have the right to disobey the order of a policeman?

Mr. Watkins: We object to that.

The Court: Sustain the objection.

Q. Is a citizen who refuses to obey the order of a policeman ever not guilty?

Mr. Watkins: We object to that as calling for a legal conclusion.

The Court: Sustain the objection.

Q. Are there circumstances under which a citizen who refuses to obey an order of a policeman under Section 2087.5 of the Mississippi Code of 1942 as Amended ever—

Mr. Watkins: We object to that as calling for a legal conclusion.

The Court: Sustain the objection.

Counsel, in order to expedite or go along with this case, I am not going to permit you to ask any more questions asking his opinion of the law. Now, any facts you want to ask, why you can proceed as far as you desire to go on cross examination of this witness, but you have your rec- [fol. 530] ords complete now and I have ruled out any questions that call for a construction of law by this defendant, because it's the duty of this Court to announce to the jury what the law is that controls the case.

Q. Judge Spencer, what is the term of your office?

A. The statute creating my office prescribes no term, Mr. Rachlin. However, there is another statute, disconnected with the statute creating my particular office, which says all public officials shall hold office for four years or until their successors are duly appointed.

To answer your question more briefly, the statute creating the police justice position states no term of office.

Q. You were appointed in what year?

A. 1958.

Q. So that more than four years have elapsed? Is that correct?

A. That is correct.

Q. And then is it your understanding that your appointive authority—that is, the mayor and commissioners—have the right to appoint a successor at any time? Is that correct, sir?

Mr. Watkins: If it please the Court, we are going to object to this. The occurrence which took place and is com- [fol. 531] plained about occurred within the four years of his original appointment, and it is immaterial as to whether or not—what the situation is as of this moment.

The Court: Yes, sustain the objection.

Mr. Rachlin: Your Honor, I am trying to prove conspiracy. It is not necessary, as Your Honor well knows, in the Federal courts and elsewhere, that the acts of the conspiracy themselves be spelled out, but that the triers of fact may draw any reasonable inference from the facts that they can. If I can show that the mayor and the commissioners—

The Court: Very well. You have stated now what you are trying to prove, and I hold that what has happened since that time is immaterial, and will sustain the objection.

Q. You heard the mayor testify yesterday?—

Mr. Watkins: We object to that. It's immaterial.

The Court: I will let him answer that.

A. Yes.

Q. —That he and the commissioners have the right to appoint your successor?

Mr. Watkins: Your Honor, he is asking what the mayor [fol. 532] said yesterday. That is highly incompetent.

The Court: Yes, sustain the objection.

Mr. Rachlin: How is that incompetent? He was here.

Mr. Watkins: One witness can't quote another one. The jury heard the mayor testify. They know what he said.

The Court: Very well, Gentlemen. Sustain the objection. Proceed.

Q. Judge Spencer, you read from some book during the course of giving your decision when you convicted the plaintiffs in this case, didn't you?

Mr. Watkins: We object to that as immaterial, Your Honor.

Mr. Rachlin: It's a question of fact.

The Court: Sustain the objection. It is immaterial whether he read from a book or whether he didn't.

Mr. Rachlin: Well—

The Court: Very well. I won't argue with you. I sustain the objection.

Q. Now, do you recall this:

"And we hold it to be the duty of all men who are professors of the Gospel to pay respectful obedience to the [fol. 533] civil authorities regularly, and legitimately constituted—"

Mr. Watkins:—We object to that.

The Court: Sustain the objection. You are reading from a Bible or Prayer Book or something there which is immaterial to the issues in this case.

Mr. Rachlin: Your Honor, it is not immaterial. This shows he came in with a determination to convict these people.

The Court: Sustain the objection.

Mr. Watkins: I ask that counsel's remark be stricken from the record, Your Honor, that the judge came in with determination to convict anybody. There is no basis for that.

The Court: I sustain that motion, and the jury will disregard that statement by counsel.

Q. Page 39 of the deposition; do you remember this question?

"What was the name of the book that you quoted from during the course of your giving your opinion?"

Mr. Watkins: We object to that as immaterial.

The Court: Yes, sustain the objection.

Q. Question: "Do you remember the full title?"

Mr. Watkins: Object to that, as immaterial.

[fol. 534] The Court: Sustain the objection.

Mr. Stennett: Further, that is reading from what Your Honor ruled a while ago is incompetent.

The Court: I have sustained the objection. No need to argue it further.

Q. Question: "Do you normally have it in court?"

Mr. Watkins: We object to that as immaterial.

The Court: Sustain the objection.



Q. Question: "Was this the first time you ever had it in court?"

Mr. Watkins: Object to that as immaterial.

The Court: Sustain the objection.

Mr. Rachlin: At this point, I would like to make an offer of proof of the last two questions on Page 39 and the answer, and the top four questions and answers on Page 40 of Judge Spencer's deposition.

The Court: Very well. Were those the same questions you asked to which I have sustained objections?

Mr. Rachlin: Yes, sir.

The Court: Very well. You may offer them and I will let the court reporter mark them as exhibit, and they will become a part of the record, but they are not received in evidence as part of the case.

[fol. 535] Mr. Rachlin: I understand.

The Court: Let the court reporter mark them. (Same was marked as Plaintiff's Exhibit No. 9, which Exhibit follows here below:)

#### EXHIBIT PLAINTIFF 9

WITNESS SPENCER

MAY 16 1963

Q. Now, you had with you the— What was the name of the book that you quoted from during the course of your giving your opinion?

A. Prayer Book.

Q. Do you remember the full title?

(Plaintiff Exhibit 9 (page 2)).

A. No. I just refer to it as the prayer book. It's the prayer book used by the Episcopal Church in the services, setting forth the services, the articles of religion and the matters pertinent to the church.

Q. Was that your own copy?

A. Yes, sir. In fact, it had my name engraved on it. It was presented to me when I was confirmed.

Q. Six years ago?

A. Yes.

Q. Do you normally have it in Court?

[fol. 536] A. No, sir.

Q. Was this the first time you ever had it in Court?

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Q. I would like you to turn to Page 43 of the deposition.

Question: "Now, these people were charged with an offense under the criminal law, weren't they?"

Answer: "Yes."

Question: "They weren't charged with any offense of any canon law, were they?"

Answer: "Well, perhaps you misunderstand my purpose in reading that article of religion. I did not read that article from the standpoint of judging guilt or innocence."

Question: "Well, why did you read it?"

Mr. Watkins: We object to that as immaterial.

The Court: Yes, sustain the objection.

Mr. Rachlin: I would like to have at least the answer on Page 43, the last long answer on Page 43, offered.

The Court: Very well. Let it be offered and marked as an exhibit, but the objection will be sustained and it will become a part of the record but not received in evidence.

[fol. 537] (Same was marked Plaintiff's Exhibit No. 10, which Exhibit follows here below:)

EXHIBIT PLAINTIFF #10

WITNESS .....

MAY 16 1963

A. I was there facing fifteen priests of my faith. I was reading it from the standpoint of my sitting in legal judgment on them; that under the articles of religion they were there as individuals, not as clergy; that they submitted themselves to the jurisdiction of the civil magistrate. My purpose in quoting that article of religion was addressed

to the proposition of whether I, as an Episcopalian, should have been the one to try it, and regardless of their guilt or innocence.

...

Mr. Rachlin: As I understand it, there was not an objection to the two previous questions I read? The objection was only to the answer to the third question? I wanted to clarify that. Those two are in the record?

Mr. Watkins: The record so shows I made an objection to the third question.

Q. Judge Spencer, the first two questions, those were the answers you gave? Is that correct?

A. I'm sorry. I didn't hear your question.

Q. Those two questions that Mr. Watkins did not object to—

Do you know the ones I am referring to? I'll go over them again.

(Counsel reads first question and answer again)

[fol. 538] That was your answer?

A. Yes.

Q. (Counsel reads second question and answer)  
You remember that answer?

A. Yes.

Q. Now, at the bottom of the page:

Question: "Didn't you actually say in court that these priests were guilty of violating that article?"

Mr. Watkins: We object to that.

Mr. Rachlin: It's a question of what he said, Your Honor.

The Court: Sustain the objection as immaterial and irrelevant.

Mr. Rachlin: I would like to offer in evidence for the record the last question on the bottom of Page 43 and the answer on Page 44.

The Court: Let it be marked by the reporter and given an exhibit number and it will become a part of the record, but it will not be received in evidence. The objection is sustained as to its being received in evidence.)

(Same was marked as Plaintiff's Exhibit No. 11, which Exhibit follows here below:)

[fol. 539]

EXHIBIT PLAINTIFF #11

WITNESS SPENCER

MAY 16 1963

Q. Didn't you actually say in Court that these priests were guilty of violating that article?

A. I believe so, and that was as stated in my opinion.

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Mr. Rachlin: I have no further questions.

The Court: Do you have any questions, Mr. Watkins?

Mr. Watkins: Not at this time.

The Court: Ver- well. You may stand aside, Judge Spencer.

(Witness excused)

LAYTON P. ZIMMER, called as a witness and having been duly sworn, testified as follows:

Direct examination.

By Mr. Rachlin:

Q. Mr. Zimmer, where do you live?

A. Swarthmore, Pennsylvania.

Q. With whom do you reside?

A. My wife and two children.

[fol. 540] Q. Are you an Ordained priest of the Episcopal Church?

A. Yes, sir.



Q. When did that ordination take place?

A. In June of 1956, to the priesthood.

Q. Were *your* part of the prayer pilgrimage in September, 1961, that was proceeding from New Orleans to the general convention in Detroit?

A. Yes, I was.

Q. And do you recall some of the stops that were scheduled to be made or were in fact made on that prayer pilgrimage?

A. Yes.

Q. Can you tell us what they were, if you recall?

A. The first stop at a school, an Episcopal school, on the outskirts of New Orleans; a stop for noonday prayers and buying Coca-Cola in McComb; a—

Q. McComb, Mississippi?

A. Yes. A stop in Vicksburg for evening prayer in the chapel, a talk with the head of the school and tea in his home, to which he invited us; and—

Q. Were all of the members of the prayer pilgrimage involved in the tea at this time?

A. Yes. The invitation he gave us was to the whole group, and we all were received very graciously by him and [fol. 541] his wife.

Q. Do you remember who he is?

A. Presently bishop of this diocese, a bishop co-adjutor of this diocese, Allen.

Q. How many white and Negro members of the pilgrimage were there, if you recall?

A. At the beginning there were, I believe, four Negro members and 24 whites.

Q. Did the now bishop co-adjutor receive all together at tea?

A. Yes.

Q. He didn't ask any of them to leave the room?

A. No.

Q. And what did you do after you left the school at Vicksburg?

A. Returned to the bus, drove down the highway—I don't remember the highway number—came into the outskirts of Jackson, drove around and out to Tougaloo.

Q. Tougaloo?

A. Southern Christian College.

Q. A few miles from where we are right now?

A. Yes.

Q. Did all of you stay in Tougaloo that night?

A. Yes.

Q. Now, was there a decision made to separate the two [fol. 542] groups at that time?

A. That evening?

Q. Yes.

A. Yes, we discussed—

Q. What group were you going to go to?

A. I was, as the only alumnus of Sewanee, to go to Sewanee.

Q. Tell us briefly what Sewanee is.

A. The University of the South, Sewanee, Tennessee, is 10,000 Episcopal acres on top of the last really large mountain in the Blue Ridge chain. A beautiful place. It comprises undergraduate college, university, and a seminary, St. Luke's School of Theology. I attended St. Luke's School of Theology in 1952-53.

Q. So that a number of you were going to go to Sewanee?

A. Yes.

Q. When did you expect to leave Jackson to go to Sewanee?

A. The seven of us decided our best timing would be to leave here at night, stop for a meal in Atlanta, and our concern then, since we knew at Sewanee we would not be able to eat together, would be not to eat again until we had talked with the people there and done what we could to witness to our concern.

Q. Now, on the day of September 13th, was it your plan [fol. 543] to remain in Jackson?

A. Yes, we planned to remain in Jackson to see what people we could. I personally planned—hoped to see the

then Rector of St. Andrews whom I have known for several years. This turned out to be impossible—

Q. —That is the church across the street from this courtroom?

A. Yes.

Q. Yes.

A. And for me, it was to be a generally relaxed day until we left in the evening.

Q. Now, you knew, of course, that 15 of your associates on the pilgrimage were going to plan to leave Jackson to go to Chattanooga? Is that correct?

A. Right.

Q. Did you know approximately what time their bus was to leave the Continental Trailways bus station?

A. At noon or shortly after, I believe.

Q. Approximately?

A. Yes.

Q. Now, in this group of 15, did you know of your own knowledge was this all white people or were there any Negroes?

A. Oh, it was a mixed group.

Q. A mixed group?

[fol. 544] A. Yes.

Q. Well, had you read or heard that mixed groups of people had been arrested in the bus station, the Continental Trailways bus station, in Jackson?

A. For some months before.

Q. Now, did you go to the bus station, the Continental Trailways bus station, on the morning of September 13th?

A. Late in the morning of September 13th.

Q. Approximately what time did you arrive there? Do you recall?

A. Yes. With a friend, I arrived at the bus station about twenty-five minutes of twelve, twenty-five minutes before noon.

Q. Who was with you at the time?

A. The Reverend Malcolm Boyd, Chaplain to the Episcopal students at Wayne State University.

Q. Where is Wayne State University?

A. Detroit.

Q. What did you do when you entered the bus station?

A. We came in from the street. I don't know the name. Past the recruiting sign, through the doors, debated whether we wanted a cup of coffee, decided no. We hoped to see our friends off, and both noticed at that time that TIME magazine that week had an article, a lead article, cover article, on J. D. Salinger, who is a favorite author of [fol. 545] both of us, so we bought a copy of TIME and sat down and began to look through it.

Q. Shortly thereafter, did you observe the four plaintiffs in this case—that is, Mr. Morris, Father Breeden, Father Jones, and Father Pierson—together with other Episcopal priests, enter the station?

A. Yes.

Q. Were you sitting in some part of the station at this time?

A. Yes.

Q. Did you observe their manner when they walked into the station?

A. Yes.

Q. Can you describe what it was?

A. They walked in, looked confused at first, looking around from one side to the other. We started to recognize them, and they turned to go to—

Q. "They"? You mean—

A. The 15. Our friends. They turned, and whether they saw us or not, I do not know, and walked toward the restaurant.

Q. Had you started to get up and go to them?

A. Yes, I did.

Q. What happened at that moment?

A. There were policemen suddenly. I don't know how many.

Q. What happened?

[fol. 546] A. They said, "You can't go in here."



Q. Did you hear that?

A. I heard that.

Q. How far were the policemen when this was *was* said?

A. Oh, a good 20 or 30 feet.

Q. Was this said in a fairly loud tone?

A. No.

Q. It was said loud enough so you could hear it?

A. Yes, but I mean no anger or—

Q. —It wasn't shouted?

A. No.

Q. And it wasn't in anger?

A. No.

Q. At the time this was said, you heard the police officer say that, did you observe any unusual number of people following your 15 associates into the station?

A. No.

Q. At the time this was said, did you hear any unusual hubbub or noise in the station?

A. No.

Q. Did you observe any of the persons in the station by gesture or word threaten any of these people?

A. No.

[fol. 547] Q. Did you see anything in the station which indicated that there was about to be trouble in the station?

A. Quite the contrary. Definitely quiet.

Q. It was quiet?

A. Yes.

Q. After you heard the officer say "Wait a minute" or "Hold up" or whatever the words were, please describe to us what you yourself saw and heard thereafter.

A. I recognized John Morris' voice saying, "We are interstate bus travelers trying to get to Chattanooga. We would like lunch before we go."

Q. Was this said in an angry tone?

A. No.

Q. Was it said in a moderate tone?

A. Yes.

Q. Please go ahead.

A. The policeman said again, "You can't go in there," referring, I surmise, to—

Q. Don't surmise.

A. "You can't go in there." John Morris repeated again, "We are interstate bus travelers on our way to Chattanooga, and we would like something to eat before we go." And the next words I heard was "Move along." And then [fol. 548] "You are under arrest."

Q. When you heard "You are under arrest," who said it? Do you recall?

A. One of the policemen, I suppose.

Q. Don't suppose.

A. I know, yes.

Q. It was one of the policemen?

A. Yes.

Q. I don't want to chastize you, but you're not allowed to suppose or imagine. You can only testify as to what you saw and heard.

A. Yes. I heard the words, "You are under arrest."

Q. Now, at that time was there any particular or unusual noise or hubbub in the station?

A. The silence in the station continued until one of the clergy began to say the Lord's Prayer, in which the others joined in.

Q. Approximately how long does it normally take to say the Lord's Prayer?

A. Less than a minute.

Q. I assume you are familiar with it.

A. Yes. Less than a minute.

Q. Did you observe any hostility among people in the station while this was being said?

A. Quite the contrary. Two young men stopped still in their tracks and listened. Before I bowed my own head, I saw one of the two elderly ladies sitting next to us bow hers, and the silence continued.

Q. You actually observed that?

A. Yes.

Q. And these old ladies didn't threaten the priests, did they?

A. No.

Q. Did the two young men threaten the priests?

A. No.

Q. Did you observe what took place thereafter?

A. One of the officers went to a desk, information desk, used the phone and called some place. Shortly after, Captain Ray came in, said words which I did not clearly understand, and the group began to move out to the loading platform.

Q. This was after Captain Ray arrived?

A. Yes.

Q. You couldn't hear what he said?

A. No.

Q. I guess he spoke in a very quiet voice?

A. Yes.

Q. At the time he appeared in the station, did you observe [fol. 550] any unusual noises or any hostility on the part of the persons in the station?

A. No.

Q. Was the station still quiet?

A. The station was still quiet. The two young men whom I had earlier observed continued their walk through the station out to join a group of men, I believe, joining the Air Force.

Q. In other words, there were some people going out to take off on a military—

A. A large grey bus with a non-commissioned officer in charge, lining these young men up and putting them on the bus.

Q. You observed that?

A. Yes.

Q. That was the only activity in the station?

A. Yes.

Q. Did you see then Captain Ray—now Chief Ray—take them out of the station?

A. Yes.

Q. Was that the last that you saw?

A. No. We both got up and walked at first by their sides, and then fell behind as they crowded through the doors and then out to the loading platform and then out to the drive-  
[fol. 551] way.

Q. What did you observe then at the back of the station?

A. There were more people outside; people from the Negro waiting room came out.

Q. How far away was it?

A. The Negro waiting room?

Q. Yes.

A. Well, the door to it was about 10 or 15 feet to the left as you came out the rear door, the loading platform door, of the white waiting room.

Q. Was there any more hostility at this time?

A. Again, quite the contrary.

Q. Tell us what you actually saw and heard.

A. A young woman crying, saying "Oh, Oh, Oh."

Q. You saw this yourself?

A. A young Negro woman who came out of the waiting room. A short man who came up to about my shoulder, just watching impassively. Those are the impressions that stay in my mind. I was rather emotional at this point myself.

Q. You were rather disturbed?

A. Deeply disturbed.

Q. Did you see them taken away in the paddy wagon?

A. Yes.

[fol. 552] Q. At this time what kind of clothes were you wearing?

A. What kind of clothes was I wearing?

Q. Yes.

A. A white shirt, open at the neck, no coat, grey trousers.

Q. Was this a method of dress fairly common to you?

A. With me.

Q. Under what circumstances do you dress in that manner?



A. When my wife doesn't have my collar shirts ironed; when I go on vacation; when I relax; oftentimes when I make parish calls in homes.

Q. When you visit your parishioners, you call sometimes in non-clerical garb?

A. Yes.

Q. This is not unusual for you to dress that way?

A. Not for me.

Q. Are you permitted to dress in common fashion if you choose under the circumstances?

A. We have complete freedom.

Mr. Rachlin: No further questions.

Cross examination.

By Mr. Watkins:

Q. Mr. Zimmer, how many churches have you served as priest in charge?

[fol. 553]. A. This one.

Mr. Rachlin: I object to the question, Your Honor, as being completely irrelevant. This is either a witness good or bad to certain events; it is unimportant how many churches he has served.

The Court: Overrule the objection. He is entitled to go into the background to a reasonable degree.

Q. What is the church, the one church?

Mr. Rachlin: Objection.

The Court: Overrule.

A. Trinity Episcopal Church, Swarthmore, Pennsylvania.

Q. How long did you serve that church as priest in charge?

A. As of this date?

Q. Yes.

A. Four and a half years.

Q. Before you came on the pilgrimage, you received certain communications from Reverend John B. Morris, the

Executive Director of the Episcopal Society for Cultural and Racial Unity, did you not?

A. Yes.

Q. I hand you Exhibits 2, 3, 4, 6, 7, 8, 9, 10, and 5 of the defendants, and I ask you if you did not receive and were not familiar with each of those before coming on the pilgrimage [fol. 554] grimage.

Mr. Rachlin: I object to the question. Mr. Watkins seems to forget that this man is not a party to this proceeding. He is a witness to a certain fact, and whether he saw or did not see those documents offered previously, submitted in evidence, is of complete irrelevance.

The Court: Overrule the objection.

A. I didn't understand the first part of your question.

Q. Did you receive and were you familiar with each of those documents before you started on the pilgrimage?

A. I believe so, yes.

Q. Then, Reverend Zimmer, you were familiar with the facts and had been advised by Reverend Morris in these documents, for instance, that your group had been offered assistance by CORE, weren't you?

A. Yes.

Q. You were familiar with the fact that—

Mr. Rachlin: Excuse me. I have an objection to all questions of this type?

The Court: Yes, you may have a standing objection to questions of that type. The objection is overruled and you will not waive your objection by failure to renew it from time to time.

[fol. 555] Q. You were familiar with the fact that Reverend Morris had publicized to you a statement in support of your pilgrimage issued by Reverend Martin Luther King, Jr.?

A. Yes.

Q. You were familiar with the fact that certain assistance had been either sought or offered by other organizations, weren't you?

A. It has been over two years, and I don't remember the detailed contents of the letters. If I may check them?

Q. It's not important enough for you to go through the group. That would take some time. Do you recall that there were other organizations, such as the Living Church, the NAACP, that had either offered or Reverend Morris thought you would get assistance from them on your pilgrimage?

A. My impression as I remember—

Q. That's the best you can do.

A. —is that we were concerned about support from the NAACP. I remember no arrangements with the Living Church.

Q. Then you remember specifically only the NAACP and CORE?

A. Yes.

Q. As the supporting organizations?

A. Not as "supporting." I don't like the word. I would say—

[fol. 556] Q. Assisting?

A. Concerned.

Q. Interested?

A. Yes.

Q. And, of course, Martin Luther King, Jr.'s organization was also interested or supporting you?

A. I knew he as a person was, but I did not know the SCLC.

Q. You knew he was head of that organization?

A. Oh, yes.

Q. You knew also from your advance notices that there was some indecision as to how many of your group was to go to jail, didn't you?

A. You ask me that, and I can only honestly say that in my mind there was no intent for anyone to go to jail. There was no question of number.

Q. Well, let me ask you about one of these exhibits. I refer you to Exhibit 6, which is a communication, one of the communications you have identified as having received, dated August 4, 1961, which was more than a month prior to your trip, wasn't it?

A. Yes.

Q. Now, I refer you to a sentence on Page 4 of that communication which reads as follows:

[fol. 557] "In the present context of things we will want to send at least ten of the pilgrimage participants to jail."

Do you remember that?

Mr. Rachlin: I'd like him to read the rest of that. I think he has the right to read whether that was in the context or out of the context or how it was used under the circumstances. I think it is not fair unless he has a chance to read the document.

Mr. Watkins: I think I am entitled to an answer on this question. Then if he wants to read it further, he may do so.

The Court: I will let him answer the question, and then he can read any part of it that he desires.

Q. Do you remember that sentence, "In the present context of things we will want to send at least ten of the pilgrimage participants to jail"?

A. No.

Q. You did not read these very carefully when you received them?

A. I was on vacation during the whole month of August.

Q. I see. Then if you had seen that sentence—

Mr. Rachlin: Objection. That is quite hypothetical.

The Court: Yes, I sustain the objection to that.

[fol. 558] Q. Do you recall being told by Reverend Morris, in Exhibit 7, dated August 19, 1961, not to be surprised if the arresting officers in Jackson were polite?

Mr. Rachlin: It's irrelevant. What difference does it make? We are not trying the manners of Captain Ray.



The Court: He is nodding his head that he didn't, so I will sustain the objection.

Q. I ask you if you read the sentence at the bottom of Page 4 of Exhibit 7. Have you ever read that sentence before?

A. I have read a paraphrase of that in the newspaper last night.

Q. That would be the first time you have seen it?

A. I do not remember the sentence as such in the correspondence, no.

Q. Then you had not received or gone over all of these communications from Reverend Morris?

A. I am sure I did. I am sure I read them in a different light than that in which you read them.

Q. Let me ask you if you remember receiving Exhibit 8, dated August 26th. Were you familiar with that before the trip?

A. You want me to glance at the whole letter?

Q. Enough of it to satisfy yourself that you had seen it and were familiar with it before the trip. Read as little or as much as you like.

[fol. 559] A. I can't answer for this specific letter, but again, it fits into the whole picture of my memory, yes.

Q. Let me direct your attention to a particular sentence. The letter first calls attention to the fact that Morris had information that bonds had increased from \$500 to \$2000 for arrest being made in Jackson, Mississippi. Is that correct?

A. Yes.

Q. You remember that. Do you remember this sentence:

"There are many possibilities but at the present it looks like it may be the better part of valor to consign only a dozen men to jail."

Do you remember that?

A. Again, the sentence itself does not stick, but certainly this fits into the context of it.

Q. That's what I thought. Who was consigning them to jail?

A. This is why I used the word "context." No one.

Q. During your visit with Bishop Co-Adjutor Allen at All Saints College at Vicksburg on September 12, 1961, did he not urge your group not to come to Jackson, Mississippi?

A. In my memory, no.

Q. Are you saying he did not or you don't remember?

A. I am saying that I do not remember that he did. What [fol. 560] I remember he said was quite different from that.

Q. Where was the decision made to divide your group into two groups?

A. As we talked at Tougaloo, each one speaking about where his own conviction would lead him, where he felt our most Christian witness could be, the group fell into three.

Q. What were the three groups?

A. One group to try to use the commonly used means of transportation and get to Chattanooga by bus; one group to talk to people in town; and whether the bus group or not was successful in leaving Jackson, then to leave by a different means of transportation to assure somebody could get to Chattanooga and then to Sewanee; and if the bus group was unsuccessful in leaving Jackson, some wished to stay and pray.

Q. Can't we say quite frankly to each other that you made a decision that night as to which ones were going to jail and which ones weren't?

A. No, sir. You can't say that to me, and I can't answer yes to that, because my whole concern as an individual was a witness in Christ's name that, God willing, in Federal territory would not lead to anyone's going to jail. We realized the risk, of course.

[fol. 561] Q. But I have read you two sentences from John Morris' letters to you and the other members of the group, in which he speaks in explicit terms as to how many are going to jail, haven't I?

A. Yes, you have.

Q. And that wasn't discussed that night?

A. Well, I think just as in the letters, this fact had come up that it was no more a binder on our concern either as to measuring up to a certain number to ride a bus or cutting down to a certain number to ride the bus.

Q. Did you discuss that night at Tougaloo how many were or were not going to jail?

A. No, sir, we did not set a number to meet, because going to jail was not the concern of the group.

Q. You were familiar with the fact that there had been a radio and press build-up of your trip since it had started in New Orleans, weren't you?

A. People in New Orleans assured us that there had been no coverage as of the morning we left, September 12th. I believe that's when the first announcement that we could not control, broke. It was to our advantage not to have a publicity campaign. This again was not our concern. I was not aware, having spent all of the 12th in a bus, what kind [fol. 562] of newspaper or radio publicity there may or may not have been.

Q. Did you not hear it on radio or television in Jackson either the night of the 12th or the morning of the 13th, the fact that you were present in Jackson?

A. I heard a news announcement in which the pilgrimage was mentioned, I believe, the morning of the 13th, and again, immediately after the bus station, I heard another newscast.

Q. Tuesday night, what decision was made with respect to what you personally would do the next day, the 13th?

A. What decision was made as to what I personally would do?

Q. Yes.

A. I wanted to go to the bus station and was allowed to do so because three of my classmates from the seminary and at least one other close friend were trying to go by bus to Chattanooga. After that, I would wait until the best time to leave by airplane for Atlanta, where we would have our final meal, and then off to Sewanee.

Q. What time did you plan to leave for Atlanta in the airplane?

A. Was in the late evening, close to midnight.

Q. What was the purpose of your going to the Trailways bus station between eleven and twelve o'clock that morning [fol. 563] on the 13th?

A. I was concerned about my friends.

Q. You were worried about them, weren't you?

A. Yes.

Q. And you went to the bus station in what I would call layman's clothes, as distinguished from clerical garb, didn't you?

A. Yes, sir.

Q. Did Reverend Boyd do the same thing?

A. Yes.

Q. So it was your purpose that you not be recognized as a clergyman there on that occasion, wasn't it?

Mr. Rachlin: Object to the question. There is nothing in the record to indicate that.

The Court: Overrule the objection. He may answer.

A. One aspect, yes. Not my purpose.

Q. You went there as an observer, didn't you, to see what was going to happen?

A. I went there as a friend, as an observer, yes.

Q. You wanted to be dressed so as not to be connected with your friends who wore clerical garb?

A. Yes.

Q. Reverend Morris has spoken of this pilgrimage in [fol. 564] some aspects as a military expedition. If we put it in military terms, you were there as a spy, weren't you?

Mr. Rachlin: I object to that.

The Court: Sustain the objection.

A. No, sir.

Mr. Rachlin: Your Honor, I ask Mr. Watkins not to inflame the jury.

The Court: Well, you make your objections and I will rule on them.



Q. Did you ever make your presence known to the police in the bus station, that you were one of the members of the clergy group?

A. No.

Q. After that, a few days after that on or about September 15th, you did tell Captain Ray of the Jackson Police Department that in the station you were very much concerned about some men who had been playing at the pinball machine, didn't you?

A. No.

Q. Did you make any similar statement to Captain Ray?

A. If I remember our conversation, I disagreed with his estimate of the number of people and their activities there at that time.

[fol. 565] Q. Did you tell him that you were concerned about anybody in the station?

A. No, sir.

Q. There was an atmosphere of emotion present in the station, was there not?

A. There was an atmosphere of emotion present in me. I was able only to observe objective facts about numbers of people and what they were doing. I could not evaluate mood.

Q. I believe you testified on direct that had, before coming to Jackson, heard of the arrest of the Freedom Riders in Jackson. Is that correct?

A. Yes.

Q. You had also heard, had you not, of the violence which accompanied the Freedom Riders' visit to Alabama?

A. Yes.

Q. And it was that fear of the same violence in Mississippi that they had received in Alabama that gave you real concern about your friends in Jackson, didn't it?

Mr. Rachlin: I object to the question. There is no establishment that there has been any violence in Jackson. In fact, Mr. Watkins has made great point all along to show there wasn't any. So I think the question is improper.  
[fol. 566] The Court: Overrule the objection.

Q. It was that violence in Alabama that made you concerned about what might happen to your friends in Mississippi, wasn't it?

A. No, sir.

Q. What did give you concern about the welfare of your friends in Mississippi?

A. I am an American and a Christian, and it hurts me that my friends are, in my eyes, so falsely handled as they were here.

Q. Then you were not concerned about any physical violence?

A. No. I heard shortly before I came down, in LIFE magazine, that Captain Ray did a good job, and as I told Captain Ray afterward, I agreed he keeps the peace.

Q. You know, don't you, if it had not been for Captain Ray and his men, we would have had violence in Jackson as they had in Alabama with the Freedom Riders?

A. Not on September 13th.

Q. What do you mean by that, having done a good job?

A. In the terms in which you are couching the questions, he had kept violence out of the scene.

Q. And that is important?

A. Yes.

[fol. 567] Q. That is what you wanted and what I wanted, wasn't it?

A. That was not, is not, the concern about which we had been speaking. As I told you, violence did not even enter our thoughts at that time.

Q. Reverend, is Sewanee an Episcopal school?

A. Yes.

The Court: I believe we will take a ten minute recess at this point.

(Whereupon the court recessed for ten minutes)

*After Recess*

(Mr. Watkins continues:)

Q. I believe you told me Sewanee is an Episcopal school?

A. Yes, I did.

Q. Did you make your trip to Sewanee?

A. Yes.

Q. I believe you also said on direct that you would not be permitted to eat together there because you were a mixed group?

A. In the school, yes.

Q. Was that the case when you did visit Sewanee?

A. Yes.

Q. And you did not attempt to overrule the decision of the person in authority at that school as to whether you [fol. 568] would be permitted to eat as a mixed group there, did you?

A. On that specific trip?

Q. Yes.

Mr. Rachlin: Does this make any difference? I move this—

A. I must say that—

Mr. Rachlin: Hold it.

The Court: Overrule the objection.

A. I was called back to Jackson for the first hearing and was not there for even the passage of time of the second meal. I do not know.

Q. From what you said on direct, I assumed that you personally would not physically oppose any decision reached by the head of that school as to whether a mixed group would or would not eat together there.

Mr. Rachlin: I move this is irrelevant.

The Court: Yes, I will sustain the objection as to what he would do.

Mr. Watkins: I have no further questions.

The Court: Any redirect?

Mr. Rachlin: I have just one or two, if you don't mind.

[fol. 569] Redirect examination.

By Mr. Rachlin:

Q. Mr. Zimmer, Mr. Watkins has gone into some length to your purposes and showed you references to numerous documents. I wonder if you would tell us in your own words what your purposes were in making the prayer pilgrimage.

Mr. Watkins: If it please the Court, I don't think that is redirect. I asked him about specific statements contained in specific letters to him from Morris. Now, he is just going back— We're going to have to sit here and listen for another thirty minutes.

The Court: I'll overrule the objection to that question. You may answer.

A. I went on the prayer pilgrimage as a Christian priest, as a Christian, as an American, as a human being. I served a God who is Love, who loves all men, whose son Jesus Christ died for all men—

The Court: Let's see, Father. The question was, what were your purposes in going? What were your purposes?

A. Obedience to what I understand my Christian mandate to be; to minister, to witness, to live, speak and act as [fol. 570] prophetically, conscientiously, clearly as I can; to show in my life what our Lord would have me and everybody show.

Q. Was it ever your intention or, insofar as you know, the intention of anyone on the prayer pilgrimage to be arrested in Jackson or elsewhere?

A. No.

Mr. Rachlin: No further questions.

(Witness excused)



Mr. Rachlin: I assume that the Court would, of course, take judicial notice of the various statutes and laws referred to in the Complaint?

The Court: Yes.

Mr. Rachlin: Both as to laws of the United States and the laws of Mississippi.

The Court: Yes.

Mr. Rachlin: Now, Your Honor, at this moment the plaintiff rests.

Mr. Watkins: The defense would like to make a motion.

Now comes the defendant James L. Spencer and respectfully moves the Court to direct the jury to return a verdict [fol. 571] for the said defendant on the grounds that the evidence affirmatively shows that he is the judge of the state court and his jurisdiction would be immune to any liability under any circumstance in this case, and that therefore he should at this time be dismissed from the case.

The Court: Motion is overruled.

Are you ready to proceed, or do you want a little time?

Mr. Watkins: Yes, sir, we are ready.

The Court: Whom will you have?

Mr. Watkins: We will call Chief Ray.

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J. L. RAY, called as a witness in his own behalf and having been duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

Q. Please state your name.

A. J. L. Ray.

Q. Your age?

A. 43.

Q. Are you a native of Jackson or where were you born and raised?

A. I was born in Mississippi, Choctaw County. I spent most of my childhood in Holmes County, Mississippi.

[fol. 572] Q. How long have you lived in Jackson?

A. Approximately 28 years.

Q. On September 13, 1961, what position, if any, did you hold with the Police Department of The City of Jackson?

A. Captain of police.

Q. Do you hold that same position today?

A. No, sir.

Q. What position do you hold?

A. Deputy chief of police.

Q. How long have you been associated with the Jackson Police Department?

A. Almost 22 years.

Q. Chief Ray, was the summer and fall of 1961 normal or abnormal for the Jackson Police Department?

Mr. Rachlin: Objection, Your Honor. We are trying a case on September 13, 1961, and not other times.

The Court: Overrule the objection.

A. Very much abnormal.

Q. Why?

Mr. Rachlin: Objection.

The Court: Overrule the objection. You may have a standing objection to that type of question if you desire, or you can make individual objections to the questions.

[fol. 573] A. That was the year of, I would say, the invasion of Freedom Riders to Alabama—

Mr. Rachlin: I object to the word "invasion."

The Court: Yes, I will let him choose another word.

Q. Substitute "visit," if that is satisfactory to Mr. Rachlin.

Mr. Rachlin: I would prefer the words "persons exercising their constitutional rights."

The Court: Go ahead and answer the question and state what happened and what the circumstances were that made it abnormal.

A. That was the year the Freedom Riders descended upon the State of Alabama, which led to riots, bloodshed,

and later that year they descended upon Jackson, which caused the city to be a very tense city and very much turmoil in the city.

Q. Do you recall when the plaintiffs and other ministers were arrested in the Trailways bus station on September 13, 1961?

A. I do.

Q. Did you have any advance notice of their coming to Jackson?

A. Yes.

Mr. Rachlin: Objection.

The Court: Overrule the objection.

[fol. 574] Mr. Rachlin: This is pure hearsay.

The Court: I don't care to hear any argument, Mr. Rachlin. Make your objections, and I will rule upon them. The objection is overruled.

Q. What advance notice did you have, Chief?

Mr. Rachlin: Objection. \*

The Court: Objection is overruled.

A. We knew about two days prior to their arrival that they had gathered in New Orleans and was going from New Orleans by way of Vicksburg and then into Jackson.

Q. Was there any mention of those activities on the part of those ministers on radio, press, television?

Mr. Rachlin: Objection.

The Court: Overrule.

A. Yes, sir. All news media carried that information.

Q. Do you know how the people of Jackson reacted to that proposed visit?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule.

Mr. Rachlin: How could he possibly know?

The Court: Well, I think I could tell you, but I think it would be improper for me to say so, so I will just overrule the objection.

[fol. 575] A. Yes, sir. In my dealings with the populace of the City of Jackson, there was very much resentment to this.

Mr. Rachlin: Object as not being responsive.

The Court: Overrule.

Q. Tell the Court and jury what occurred at the time of the arrest of the ministers on September 13, 1961.

Mr. Rachlin: I object to the question on the grounds the testimony has already indicated, from the officers themselves, that he was not there at the time they were arrested; and therefore his testimony would be incompetent, irrelevant and immaterial.

The Court: Overrule the objection. What he knows from his own personal knowledge.

A. I arrived at the Trailways bus terminal about 11:30 or 11:35. As I approached the terminal from the rear through the lot there, I was approached by a gentleman as I was entering there, and he told me that I had better hurry and get inside, that there was going to be some serious trouble. I immediately walked into the terminal, and it was an unusual amount of people in the terminal, and they were in a very dissatisfied and ugly mood, I would call it. And the focus point was near the entrance to the cafeteria, where a group of 15 ministers were standing.

[fol. 576] Mr. Rachlin: Your Honor, I object to the last part of this man's answer on the grounds that he couldn't possibly have known what the focus point and what the large number of people, as he has testified, in the bus terminal.

The Court: Overrule the objection.

A. At this time I determined the cause of the trouble, which I determined to be these—

Mr. Rachlin: Your Honor, I object to the statement of what he determined. We are not concerned with the processes of his mind. We are only concerned with what he did or said.



The Court: Overrule the objection.

A. I determined the cause of the trouble to be these ministers, and at that point I approached them, trying to remove the cause and make the situation back to normal. And as I approached them, I ordered to move on and move out of the terminal.

Q. Let me interrupt you. Were the four plaintiffs in the case four of the 15 ministers you are telling us about?

A. They were.

Q. Go ahead.

A. I approached them, ordered them to move on and [fol. 577] move out of the terminal. At that point Mr. Morris says, "We can't." I gave the order again, the same order, and at that time he told me that "All we want to do is get something to eat and catch our bus." I told him that I would be happy to see him safely on the bus and to follow me. He says, "We can't." I gave the order again, and he said, "We can't." I says, "Then you refuse to obey my order?" He says, "That's right." And the others indicated the same. I then told them they were under arrest, asked them to follow me, and at that time they were very willing to follow me. We walked out the rear door, the same one I had entered, walked east on the ramp, and as we walked down the ramp, a group of people followed us out, and at that point I pointed this group of people out to them and, since they were ministers, I remembered one of the Beatitudes, "Blessed are the peacemakers," and I quoted that to Reverend Morris, and I said, "You're not making peace." We walked on to the end and waited for the paddy wagon. At that time Reverend Morris pulled out his Testament or Prayer Book and began to read from what I recognized to be some of Paul's writings about "Put on the whole armor of God." While we were waiting there, he was still reading. The paddy wagon pulled up, [fol. 578] the other ministers didn't respect him enough to wait till he got through.

Q. What did they do?

A. They began to crowd into the wagon.

Q. Did you try to avoid arresting the ministers on that occasion?

Mr. Rachlin: I object to that question, Your Honor. What he did is the only thing of importance in this case.

The Court: Overrule the objection.

A. Yes. I gave them orders several times, hoping they would obey my orders. I didn't want to arrest a bunch of preachers.

Q. Why did you arrest them?

Mr. Rachlin: Object to the question.

The Court: Overrule the objection.

A. The circumstances was there that was such that had I not removed the cause or the root of the trouble, there would have been violence and possibly bloodshed.

Q. What would have occurred if you had not arrested them when you did?

Mr. Rachlin: Object, Your Honor. That is purely speculative.

The Court: I'll let him give his opinion.

[fol. 579] A. My opinion is that there would have been violence.

Q. Did the colors of their skin have anything to do with the arrests?

A. No, sir.

Q. Did the place of the arrest have anything to do with the arrest?

A. No, sir.

Q. If they had congregated on the public sidewalks under the same circumstances and had refused to disburse, what would you have done?

Mr. Rachlin: Objection, Your Honor. This is not the facts of the case before us.

The Court: Overrule the objection.

A. Under similar circumstances, had they been anywhere in the City of Jackson, I would have handled it the same way.

Q. Tell the Court and jury whether members of both races were arrested in the same location for the same reason.

Mr. Rachlin: Objection, Your Honor. We are trying this case and not other cases. Therefore, the question has nothing to do with this case.

The Court: Overrule the objection.

A. Repeat the question.

Q. Tell the Court and jury whether members of both races were arrested in the same location for the same reason.

A. Yes, sir.

[fol. 580] Q. Did race have anything to do with the arrests?

A. No, sir. It was the circumstances.

Q. Please tell the Court and jury whether these arrests were discussed by you with Judge Spencer at any time before they were made.

Mr. Rachlin: Your Honor, this is self-serving, as well as being incompetent, and the other reasons I have stated.

The Court: Overrule the objection.

A. I had no discussion with Judge Spencer.

Q. Did he have anything to do with the arrests?

A. He did not.

Mr. Rachlin: I object to that.

The Court: Overrule the objection.

Q. Were these arrests of the plaintiffs or the plaintiffs discussed with Judge Spencer at any time before the cases were tried in municipal court?

Mr. Rachlin: Objection, Your Honor. To prove a conspiracy, it isn't necessary that there be conversations with Judge Spencer, and what's more, this witness is incom-

petent to testify as to whether there was or wasn't. It is self-serving.

The Court: Overrule the objection.

[fol. 581] A. Repeat that question.

Q. Were the arrests or the plaintiffs discussed with Judge Spencer at any time before they were tried in municipal court?

A. No, sir.

Q. Did you testify in the municipal court?

A. I did.

Q. Did you testify in the county court?

A. No, sir.

Q. After the arrests were made, did you have occasion to talk to Reverend Zimmer, who appeared here as a witness today?

A. I did.

Mr. Rachlin: Your Honor, this covers a time subsequent to the arrest, subsequent to the trial, and therefore—

The Court: I will overrule the objection, to that question, anyway. I assume he intends to impeach the testimony by laying the predicate to a question propounded to Reverend Zimmer.

Q. Did Reverend Zimmer say anything to you with respect to the conduct or atmosphere in the bus station at the time of the arrest with respect to any individuals in the station?

A. He did.

[fol. 582] Q. What did he say?

A. We discussed the tense situation down there and the number of people in the terminal. He told me he was very much concerned with especially two men near the pinball machine.

Q. When did this conversation take place?

A. That's while we were on the outside. The rule had been invoked, and we were outside as witnesses.

Q. Where?

A. At the municipal court.



Q. That would have been on the 15th of September?

A. I believe that is correct.

Mr. Watkins: I believe that is all.

Cross examination.

By Mr. Rachlin:

Q. Chief Ray, when you entered the station on the 13th, did you speak to either of the defendants, Officer Griffith or Officer Nichols?

A. No, sir, I did not.

Q. You did not ask them what had taken place before you got there?

A. No, I didn't.

Q. Of course, you didn't know what took place before you got there?

[fol. 583] A. That is correct.

Q. Did you see these defendants commit any disorderly act?

A. Yes, sir, they refused to obey my orders—

Q. I asked, before you spoke to them. Did you see them commit any disorderly act before you spoke to them?

A. Other than their presence there was such it caused a threat.

Q. Other than their presence, they did nothing disorderly, did they?

A. That is correct.

Q. Did you hear any obscene language?

A. No, sir.

Q. You didn't hear them shout or scream?

A. Not like you're doing, no, sir.

Q. And they were very quiet, weren't they?

A. That is correct.

Q. And they behaved in a perfectly proper manner, didn't they?

A. That is correct.

Q. And they behaved like gentlemen all the time, both before and after the arrests, didn't they?

A. I wouldn't say that, no sir.

Q. They weren't gentlemen?

A. No, sir. Had they been wanting to do what was right, they would have obeyed my order.

[fol. 584] Q. That would have made them gentlemen?

A. They wouldn't have wanted to cause trouble, that's correct.

Q. Are you certain they wanted to cause trouble?

A. Had they not; in my opinion they would have obeyed my orders.

Q. If they had obeyed your orders, that would have been all right?

A. In other words, with the circumstances that had developed, yes.

Q. What was it that caused you to be anxious about their appearance in the bus station?

A. To be anxious?

Q. Yes. What were you anxious about?

A. Explain the "anxious."

Q. What were you disturbed about as you walked into the bus station?

A. I was disturbed because the circumstances in there were such that this group of ministers had caused the people to be in a turmoil, they were—

Mr. Rachlin: I object to the answer as not responsive.

The Court: Overrule.

Q. Proceed.

A. Well, that's the answer.

Q. Did you speak to any person inside the bus station [fol. 585] other than the plaintiffs and the other policemen?

A. No.

Q. Did you ask any person in the bus station other than the plaintiffs to leave the bus station?

A. No, but I would like to explain why.

Q. I didn't ask you that. You didn't speak to a single person in the bus station?

A. No, sir, and I would like to explain why.

The Court: Very well. You can go ahead and explain.

A. I was concerned with the cause of the trouble, and I didn't feel like a delay was proper at that time. I wanted to get that cause out, which was this group of Episcopal ministers.

Q. You didn't even try to ask other people in the bus station to leave?

A. No, sir.

Q. You wanted to remove them for their safety? Is that the idea?

A. I wanted to prevent bloodshed and violence and riot.

Q. You didn't think they were going to commit bloodshed against anybody else, did you?

A. No, sir, but—

Q. Bloodshed committed against them. Isn't that correct?

[fol. 586] A. Can I go ahead and answer?

The Court: Give him time to answer the question.

A. I didn't want them to cause bloodshed and violence. I didn't want anybody to get hurt, the ministers or anybody else.

Q. I will ask you again: Did you think they were going to commit violence against you or anybody else in the station?

A. At the time, no, but their presence there was a threat, and that was the cause of the trouble.

Q. Did you think other persons were going to commit violence, who then were in the bus station?

A. Yes, I thought violence was going to occur.

Q. By other people. Is that correct?

A. That's right.

Q. So you removed them to prevent other people from committing violence against them?

A. They were the cause of the disturbance and turmoil.

Q. You removed them to prevent violence being committed against them? Isn't that correct?

A. That is correct.

Q. You heard Mr. Morris, Mr. Zimmer, Father Breeden, Father Jones and Father Pierson all say the station was absolutely quiet. Are you saying their testimony was a lie?

Mr. Watkins: We object to that.

[fol. 587] Mr. Rachlin: I have a right. This man—

The Court: Just quiet down a minute, Mr. Rachlin. It is incompetent for one witness to comment on the falseness or the truthfulness of another witness.

Mr. Rachlin: That is all.

(Witness excused)

DAVID A. NICHOLS, called as a witness in his own behalf and having been duly sworn, testified as follows:

Direct examination.

By Mr. Stennett:

Q. State your name, please.

A. David Allison Nichols.

Q. Where do you live?

A. 319 Windsor Drive, Jackson, Mississippi.

Q. Are you a native of Jackson?

A. I was born in Clay County and moved to Chickasaw when I was approximately six years old. There I lived until I was eighteen. I spent three years in the service in Armored Amphibious Division in the Pacific. I came home and stayed in Chickasaw and Clay County until '49; then I came to Jackson.

Q. By whom are you employed?

A. City of Jackson, Police Department.

[fol. 588] Q. Were you so employed in September of 1961?

A. I was.



Q. What position did you hold with the police department on that date?

A. Patrolman.

Q. What position do you hold today?

A. Patrolman.

Q. How long have you been associated with the Jackson Police Department?

A. Be five years next month.

Q. Five years, you say?

A. Five years this coming June.

Q. Mr. Nichols, was anything unusual about the summer and fall of 1961 to the Jackson Police Department?

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule.

A. Very unusual.

Q. What was unusual about it?

Mr. Rachlin: Objection.

The Court: Overrule.

A. We had had the Freedom Riders in Alabama causing bloodshed, property damage, and then they came to the State of Mississippi where we had had quite a few arrests [fol. 589] of the Freedom Riders in the City of Jackson.

Q. Do you recall when these four plaintiffs came to the City of Jackson and, particularly, the Trailways bus station?

A. They were in a group of 15 that came, in September.

Q. You recognize these four plaintiffs here today as being in that group?

A. I recognize the four.

Q. Tell us whether or not, Mr. Nichols, you had any advance notice of their coming to Jackson.

Mr. Rachlin: Your Honor, his knowledge is not important, his personal knowledge.

The Court: Overrule the objection.

A. Newspapers, radio, television, had all been carrying the publicity of the priests coming to Jackson.

Q. Had that publicity been disseminated generally to the people over the city?

A. It had.

Mr. Rachlin: Your Honor, Mr. Stennett shouldn't testify for the witness. That clearly was a leading *qaestion*, putting words in the witness' mouth.

The Court: Well, I will overrule the objection now because the question has been answered. It probably was leading, so I sustain as to leading the witness.

[fol. 590] Q. Did you know how the people of the City of Jackson reacted to this proposed visit?

A. There was very disturbed about it—

Mr. Rachlin: Objection, Your Honor, unless he shows he knows.

The Court: Overrule the objection, if he knows.

A. The people of Jackson were very disturbed about this trip they were making.

Q. Disturbed?

A. They was disturbed.

Q. Were you at the Trailways bus station on September 13th at the time of the arrest of these plaintiffs?

A. I was.

Q. Please tell the Court and jury what occurred there at that time.

A. Officer Griffith and myself was standing on the back ramp of the station back where the buses come in.

Q. This is Officer Griffith (indicating)?

A. That's Officer Griffith. And we happened to see these three cabs pull into the entrance to where the buses come around the station off Pascagoula Street, and it was a load of ministers unloading. We turned and started walking in the bus station, and they entered the front door of the station approximately the same time we entered the rear

[fol. 591] door of the station, and we met them just about where the lunch counter, where you go into the lunch room. We asked them to move on. They refused. We asked them again to move on—I did myself. They refused again. And at this time they said they was interstate travelers and wanted to get something to eat. I asked them to move on again and they refused. I asked them did they understand my orders, and they said they did. I asked was they going to obey them, and they said they weren't. At that time Officer Griffith placed them under arrest.

Q. Why did you tell them to move on?

Mr. Rachlin: Objection.

The Court: Overrule the objection.

A. Well, it was a custom of ours in the City of Jackson to ask any crowd of this type, which the Freedom Riders had been a crowd of this type, to move on and disburse before making any arrest.

Mr. Rachlin: I object and ask the statement be stricken from the record.

The Court: Overrule the motion.

Q. Officer, were these people the only ones in the bus station, or were there others in the bus station?

[fol. 592] A. At the time they entered the bus station, oh, there was 10 or 15, maybe 20 people in there. Coming in behind them was quite a sizeable group, maybe 25 or 30 people, came in behind them from the street.

Q. What was the situation when the other people came in behind them?

A. Well, after we got them stopped, their going to the lunch counter, part of 'em had come back out of the lunch room, people in there was mumbling in a very ugly mood and moving about and talking.

Q. Tell the Court and the jury whether or not you tried to avoid arresting these plaintiffs in this group.

Mr. Rachlin: Objection to the question.

The Court: Overrule the objection.

A. We did. We asked them to move for the third time, and they refused each time.

Q. Why did you arrest them?

Mr. Rachlin: Objection.

The Court: Overrule.

A. They had refused our orders to move on and disburse.

Mr. Rachlin: This is a self-serving statement, and I think it objectionable.

The Court: Overrule.

[fol. 593] Q. What, in your opinion, would have occurred if you had not arrested them?

Mr. Rachlin: This is self-serving, improper— All this witness can do is to testify what he himself did. I therefore ask he not be allowed to answer the question.

The Court: Overrule the objection.

A. From the situation in the bus station, the people in the mood they was in, there would have been violence, in my opinion.

Q. Is that why you arrested them?

A. That is why, that and disobeying the orders to move on.

Q. Tell this Court and jury whether the color of their skin of these people you placed under arrest had anything to do with the arrest?

A. No.

Q. Tell the Court and jury whether or not the place of the arrest had anything to do with the arrests?

A. No.

Q. What would you have done under similar circumstances at any other particular place?

Mr. Rachlin: Your Honor, this is hypothetical and unimportant.

The Court: Overrule the objection.



[fol. 594] A. Under the same circumstances, they refused my orders, I would have made the arrest.

Q. Were members of both races arrested in the same location for the same reason?

A. They were.

Mr. Rachlin: Object, and I ask the question and answer be stricken.

The Court: Overrule the objection.

Q. Tell us whether or not the race of those arrested had anything to do with the arrests?

A. It did not.

Q. Officer, I would like for you to tell the Court and jury whether or not these arrests were discussed with the defendant, Judge Spencer, before they were made.

Mr. Rachlin: Objection.

The Court: Overrule.

A. They were not.

Q. Tell us whether or not the defendant, Judge James L. Spencer, had anything to do with the arrests?

A. Not to my knowledge, he did not.

Q. Was he present in the bus station that morning?

A. He was not.

Q. Tell the Court and jury whether these arrests were [fol. 595] discussed with Judge Spencer at any time before they came to trial.

Mr. Rachlin: This is incompetent testimony and self-serving; it is irrelevant and immaterial and incompetent.

The Court: Overrule.

A. Not that I know of.

Q. You didn't discuss it with him?

A. No, sir.

Q. Did any one in your presence?

A. No, sir.

Q. Officer, did you testify in the municipal court?

A. No, sir.

Q. Did you testify or were you called for a witness in the county court?

A. I testified in county court.

Mr. Stennett: I believe that is all.

Cross examination.

By Mr. Rachlin:

Q. You said you testified in the county court?

A. I did.

Q. You were present from the very first moment when you saw them get out of the taxicab and you were standing [fol. 596] in the back of the station until they were put in the paddy wagon?

A. I was.

Q. You saw the entire incident? Is that correct?

A. Most of it.

Q. Chief Ray—Now Captain Ray—only came later, didn't he?

A. He came after I made a phone call to headquarters for transportation; I talked to Chief Pierce, and Chief Pierce told me Captain Ray was on his way down.

Q. He was already on his way down?

A. He told me he was on his way down. I don't know whether he left at that time when I made the call or whether he had already left headquarters coming down, or when he left, but Chief Pierce told me that Captain Ray was on his way down. He could have been walking out of the office at that time.

Q. Well, you understood him to mean that Captain Ray was already on his way down?

A. I understood him to mean Captain Ray would be there in a few minutes.

Q. Now, you were standing on the back ramp, weren't you?

A. I was.

Q. And as soon as you saw them, you and Officer Griffith went into the station? Is that right?

[fol. 597] A. We turned around and walked up the ramp and into the station.

Q. Now, as they got out of the cab, did you see anything unusual in the area about them?

A. I saw the priests.

Q. Did you see any crowds around them?

A. No.

Q. Did you see them do anything wrong?

A. No.

Q. In fact, you didn't see them do anything wrong at all the time, from the moment they got out of the taxi cab until they went into the paddy wagon?

A. They was there and the manner they was there caused a breach of the peace, and we placed them under arrest.

Q. What was this manner you were talking about?

A. They had been a publicized group as coming through Jackson. They came, the people was disturbed, in a turmoil, and it caused quite a disturbance when they was there, and we was to remove the cause of the disturbance, and we placed them under arrest.

Q. They didn't say anything to cause a disturbance?

A. I didn't hear it.

Q. Did they say anything to cause a disturbance?

A. I didn't hear.

[fol. 598] Q. Did they threaten you or your associate officer or any person in the station?

A. Not that I saw.

Q. In fact, they behaved in a pretty orderly manner?

A. Until they refused to move on when I asked them to.

Q. Well, up until that moment they were orderly, until you spoke to them? Is that right?

A. They was orderly.

Mr. Rachlin: No further questions.

(Witness excused)

JOSEPH D. GRIFFITH, called as a witness in his own behalf and having been duly sworn, testified as follows:

Direct examination.

By Mr. Stennett:

Q. State your full name.

A. Joseph David Griffith.

Q. How old are you?

A. 25.

Q. Where do you live?

A. 710 Primo Avenue, Jackson, Mississippi.

Q. Are you a native of Mississippi?

A. I was born and raised in Simpson County.

[fol. 599] Q. How long have you lived in Jackson?

A. About six years.

Q. By whom are you employed?

A. City of Jackson Police Department.

Q. Tell us whether or not you were so employed in September of 1961?

A. I was.

Q. How long had you been employed by the Jackson Police Department?

A. Approximately three years and three months.

Q. Tell us whether or not there was anything usual or unusual insofar as the Jackson Police Department was concerned during the summer and fall of 1961?

Mr. Rachlin: Your Honor knows my objection. I have made my reasons perfectly clear.

The Court: I overrule the objection, and you may have a standing objection.

Mr. Rachlin: I would prefer to object so the jury will know I dislike each question.

The Court: Yes. All right.

A. The year '61 was very unusual in the City of Jackson.

Q. Why?



**Mr. Rachlin: Objection.**

**[fol. 600] The Court: Overrule.**

**A. Because of the Freedom Riders that had started in Alabama, in Montgomery, Alabama, and Anniston, Alabama; they had violence, and later on they started coming into Jackson.**

**Q. Tell us whether or not we had any violence in Jackson as a result of this?**

**A. No, sir.**

**Q. Were you or not present at the Trailways bus station on September 13th when these plaintiffs arrived there?**

**A. I was.**

**Q. Did you recognize these plaintiffs as being in that group that arrived there that day?**

**A. Yes, sir.**

**Q. Tell us whether or not you had any advance notice or whether any advance notice of their coming had been publicized.**

**Mr. Rachlin: Objection, Your Honor.**

**The Court: Overrule.**

**A. We had a prior knowledge of these ministers coming to Jackson through different news media. Some of the news media stated a group of Episcopal ministers had assembled in New Orleans for a meeting and were planning to continue their trip to Jackson, a Freedom Ride to Jackson.**

**[fol. 601] Mr. Rachlin: Object to that statement. There is nothing in the record about a Freedom Ride to Jackson.**

**The Court: Overrule the objection.**

**Q. Was that information disseminated over public radio?**

**A. Yes, sir.**

**Q. And in public newspapers?**

**A. Yes, sir.**

**Mr. Rachlin: Objection.**

**The Court: Overrule.**

Q. Tell us if you know how the people of the City of Jackson reacted to this proposed visit in the light of the information that had come in.

Mr. Rachlin: Objection.

The Court: Overrule.

A. They resented it very much so.

Mr. Rachlin: I think there is no proper foundation for this question, and the answer, I think, is incompetent under those circumstances.

The Court: Overrule.

Q. Now, were you present at the bus station at the time of the arrest?

A. I was.

[fol. 602] Q. Who was there with you? What officer, if any?

A. Officer Nichols.

Q. Tell us whether or not Officer Ray showed up there.

A. Yes, sir, he showed up later on.

Mr. Rachlin: You were referring to Chief Ray?

Mr. Stennett: Yes.

Q. Tell us whether or not he is your superior officer or of equal rank, or what.

A. He is my superior officer.

Q. Tell the Court and jury just what occurred at the time of the arrest of these people.

A. Officer Nichols and myself were standing on the southeast corner of the Trailways bus terminal, on the ramp, when we noticed three cabs pull into the east driveway at the east side of the Trailways bus terminal, and a group of ministers started unloading. We proceeded down the ramp into the back of the building, which is located on the south side of the Trailways bus terminal. As we walked across the bus terminal, we noticed that the crowd was reacting differently than what they were when we were in there before. We entered the back door approximately the

same time that the ministers entered the front door. We then walked on toward the entrance to the restaurant door. [fol. 603] Two or three of the ministers got through the door to the restaurant, and I believe I said, "Hold it up a minute," and they came back out and were in *agroup* in front of the magazine stand in the west waiting room of the Trailways bus terminal.

We had determined at this point that they were the cause of the trouble, and if we did not remove the cause of the trouble from the Trailways bus terminal, there would be violence and bloodshed.

Mr. Rachlin: Your Honor, I ask the last part of the answer be stricken, from the moment he said he "determined." We are not concerned with what he determined, but with what he did and said and observed.

The Court: Overrule the objection.

A At this point Officer Nichols ordered this group to move on. I believe Mr. Morris spoke up and said, "We are interstate passengers. We are not violating any law." Officer Nichols ordered them again to move on. Mr. Morris, acting as spokesman for the group, spoke up once more and said, "All we want to do is get something to eat and catch our bus." Officer Nichols asked the group then if they understood his orders. The reply was that they did. He asked them if they would obey his orders. Their reply was [fol. 604] that they did not. I then placed them under arrest. Mr. Morris then spoke up and said, "What charge?" I said, "Breach of the peace." At that point Officer Nichols went to the phone and called police headquarters for help, and while he was on the phone the ministers went into some kind of meditation, I presume, or prayer. Four or five minutes later, Captain Ray came to the bus station, and he once more ordered the group to move out of the bus station, and I believe Mr. Morris spoke up again and said, "All we want to do is get something to eat and catch our bus." Captain Ray said, "If you will follow me, I will be happy to show you safely on your bus." Captain Ray asked them then if

they understood his orders, and the reply was that they did, and also asked him if they obeyed his orders, and the reply was that they did not.

And then he placed them under arrest, asked them to follow him. They followed Captain Ray out of the back door. Officer Nichols and myself waited until they got by and stayed between the ministers and the crowd that had assembled in the Trailways bus terminal.

Q. At that point, let me ask you to tell us whether or not any other people entered the bus station at the time or [fol. 605] immediately after the ministers came in.

A. Before the ministers entered the bus station, everything was normal all the morning, the usual run of Trailways bus terminal during that time of the week; 12 or 15 people were in the station. When the ministers entered the front door on the north side of the building, approximately 20 or 25 people followed them in.

Q. In behind them?

A. Yes, sir.

Q. What happened when Captain Ray led them out at the back door?

A. Some of the crowd that had assembled in the bus terminal followed us out.

Q. And that is when you say you and Officer Nichols got between the crowd and the priests?

A. Yes, sir.

Q. Tell us whether or not you tried to avoid arresting these ministers.

Mr. Rachlin: Objection to what he tried to avoid.

The Court: Overrule the objection.

A. Yes, sir, we tried to avoid arresting them by ordering them to move on, to preserve the peace and maintain law and order in the bus terminal.

Q. Then tell us why you did arrest them, for what purpose?

[fol. 606] Mr. Rachlin: Objection, Your Honor. His state of mind is irrelevant and incompetent.

The Court: Overrule the objection.



A. They were placed under arrest because we had determined they were the cause of the trouble in the Trailways bus terminal and if we did not remove the cause of the trouble from the bus terminal that there would be violence and bloodshed.

Q. That is your opinion about what would have happened had you not placed them under arrest and removed them?

Mr. Rachlin: Is Mr. Stennett testifying, Your Honor?

Mr. Stennett: No, sir, I am not testifying.

The Court: Yes, that is leading. Sustain the objection.

Q. Tell us whether or not the color of their skin had anything to do with their arrest.

A. No, sir.

Q. Did the place of arrest have anything to do with their arrest?

A. No, sir.

Q. Tell us what would have happened under the same circumstances connected with a congregation at any other place under the same circumstances.

[fol. 607] Mr. Rachlin: That is irrelevant, incompetent and immaterial, what would have happened some place else.

The Court: Overrule.

Q. What would you have done under similar circumstances?

A. Under similar circumstances, about the same procedure would have been taken to preserve the peace and to maintain law and order in the City of Jackson, because I feel we have a clean city here and I hope and pray that we can keep it this way and not have violence and bloodshed.

Q. Were members of both races arrested in the Trailways bus station that morning for the same reason?

A. Yes, sir.

Q. Tell us whether or not race had anything to do with the arrest.

A. No, sir.

Q. Did you or anyone in your presence discuss these arrests with Judge Spencer before the arrests were made?

Mr. Rachlin: Objection.

The Court: Overrule.

A. No, sir.

Q. Was Judge Spencer in the Trailways bus station that morning?

A. If he was I didn't see him.

Mr. Rachlin: We'll concede that Judge Spencer was not [fol. 608] in the Trailways bus station.

Mr. Stennett: Thank you.

Q. Tell us whether or not Judge Spencer had anything to do with the arrests.

A. Not to my knowledge, no, sir.

Q. Tell us whether or not you discussed the arrests of these plaintiffs with Judge Spencer or had anyone discussed it with him in your presence?

A. No, sir.

Mr. Rachlin: Objection, Your Honor.

The Court: Overrule the objection.

Q. Did you testify in the municipal court?

A. No, sir.

Q. Did you testify in the county court?

A. No, sir.

Mr. Stennett: I believe that is all.

Cross examination.

By Mr. Rachlin:

Q. Officer, I think when counsel was questioning you, you said you would have made these arrests under similar circumstances, either in the station or any place, again if that happened? Is that right?

[fol. 609] A. Yes, sir. Anywhere in the City of Jackson to preserve the peace and maintain law and order, yes, sir.

Q. Now, isn't your judgment on this corrected by the fact that on appeal Judge Moore dismissed the charges against them?

Mr. Watkins: We object to that.

The Court: Yes, sustain the objection.

Mr. Rachlin: Your Honor, they were allowed to go into what this officer would do under other circumstances. I am allowed to show that he would have—I don't withdraw my objection; I just express my frustration. That's all.

The Court: I sustain the objection.

Q. You say you saw people follow them into the station after they entered? Is that right?

A. Yes, sir.

Q. Now, let me ask this question: Officer, were you concerned when you saw people follow them into the station that the plaintiffs and other Episcopal ministers were going to commit any violence against anybody? You didn't think they were going to do anything, did you?

A. Well, it was a threat for—

Q. —I didn't ask you that.

Mr. Watkins: Let him answer.

[fol. 610] Mr. Rachlin: Your Honor, that was not responsive. I asked him whether he thought they were going to commit any violence.

The Court: I will let him answer the question and then he can explain.

Q. Answer the question.

A. It was a threat for the ministers being in the waiting room of the Trailways bus terminal.

Q. I will ask you again: Did you think that Father Breeden here or Mr. Morris or Father Pierson or Father Jones were going to hit anybody?

A. No, sir.

Q. Did you think they were going to shout filthy remarks at anybody?

A. I don't think so, no, sir.

Q. You didn't hear them, did you?

A. No, sir.

Q. In fact, they spoke in a perfectly quiet tone of voice?

A. Yes, sir.

Q. And they were quiet all during the time you saw them? Isn't that true?

A. Yes, sir.

Q. They didn't commit what we call disorderly acts, did they?

[fol. 611] A. No, sir.

Q. When you saw this crowd—that is, when you and the other officer saw this crowd— And you know, of course, there is a dispute about that crowd—but, as you described it, did you and the other officer or either of you go to the entrance where this crowd was coming in and ask them what was their business in the bus station?

A. No, sir.

Q. Did you ask anyone else in the bus station to leave the bus station?

A. No, sir.

Q. Did you hear what anybody in the bus station was mumbling about?

A. No, sir, just to tell they were mumbling, moving around the bus station; could tell they was in an ugly manner from their expressions on their face; if we didn't take some kind of action that violence and bloodshed would occur.

Q. Violence and bloodshed would have occurred because people in the station, you say, didn't like the ministers? Is that the idea?

A. Yes.

Q. The ministers wouldn't have committed the violence, would they?

[fol. 612] A. I don't believe.



Q. The other people in the station would have committed the violence? Isn't that right?

A. Yes, because of the presence of these ministers.

Q. You didn't ask anybody else to leave the station?

A. No, sir.

Q. How many people did you hear say anything out loud about the presence of the ministers in the bus station?

A. I didn't hear anyone say anything out loud.

Q. Did you ask anybody in the bus station what was on his mind?

A. No, sir.

Q. Did you offer to escort these people into the restaurant and let them eat whatever they wanted to and then go on their way in the bus?

A. No, sir.

Mr. Rachlin: No further questions.

(Witness excused)

The Court: We're going to take a recess at this point.

Gentlemen, under the instructions I have heretofore given you, separate and be back at one-thirty.

(Noon Recess)

[fol. 613]

*After Recess*

Mr. Watkins: We'd like to call Judge Spencer.

JAMES L. SPENCER, called as a witness in his own behalf and having been duly sworn, testified as follows:

Direct examination.

By Mr. Watkins:

Q. Please state your name.

A. James L. Spencer.

Q. Your age?

A. I'll be 42 in July.

Q. The extent of your education?

A. I graduated from public schools in Jackson, Tennessee. I received a Bachelor of Arts degree from the University of Alabama. I received my law degree, Bachelor of Law degree, at the University of Virginia.

Q. Where do you live?

A. Jackson, Mississippi.

Q. Are you a licensed practicing attorney in Jackson, Mississippi?

A. I am.

Q. Since what date?

A. Spring of 1947, I believe.

Q. What position, if any, did you hold with the City of Jackson on September 13th, 1961?

[fol. 614] A. I was police justice and ex-officio justice of the peace.

Q. Did you know any of the plaintiffs in this case before they were tried in your court?

A. No, sir.

Q. Did you have anything to do with their arrest?

A. No, sir.

Q. Did you have anything to do with the preparation of charges filed against them?

Mr. Rachlin: Your Honor, objection on the ground it calls for a self-serving answer.

The Court: Overrule the objection.

A. No, sir.

Q. What attorneys represented them in your court?

Mr. Rachlin: Objection as being quite irrelevant to this proceeding.

The Court: Overrule.

A. Mr. Carl Rachlin and Jack Young.

Q. Do you know the residences of those attorneys?

Mr. Rachlin: Objection.

The Court: Sustain the objection.

Q. Did any of the plaintiffs or either of their attorneys request a jury trial in your court?

Mr. Rachlin: Objection, Your Honor. What difference [fol. 615] does it make? That is not the issue in this case.

The Court: Overrule the objection.

A. No, sir.

Q. Did any of the plaintiffs in this case, either Reverend Pierson or Mr. Morris, Reverend Breeden or Reverend Jones, testify in your court?

A. No, sir.

Q. Did anything influence your decision other than desire to see justice done?

Mr. Rachlin: That calls for a highest and self-serving answer, and I ask he be instructed not to answer the question.

The Court: Overrule the objection.

A. No, sir.

Q. Are you an Episcopalian?

A. I am.

Mr. Rachlin: —Objection, Your Honor.

The Court: Yes, sustain the objection.

Q. Do you know what evidence was offered in Judge Moore's court?

Mr. Rachlin: It doesn't make any difference whether he knows or he doesn't know.

[fol. 616] The Court: Yes, sustain the objection.

Q. Did you harbor any ill will or malice for any of the plaintiffs?

Mr. Rachlin: Objection, Your Honor. That calls for a conclusion on the part of this witness, and he is not permitted to give a self serving statement of that kind.

The Court: Overrule.

A. No, sir.

Mr. Watkins: That is all.

Mr. Rachlin: Your Honor, in light of Your Honor's rulings this morning to the questions I now would have asked Judge Spencer, may I move that those questions be deemed a part of a cross examination I would have made of Judge Spencer, but in light of Your Honor's ruling, I have no further questions that I could reasonably ask.

The Court: Yes, sir.

Mr. Rachlin: —I ask they therefore be made here and Your Honor would make the same rulings accordingly.

The Court: Yes, sir.

Mr. Rachlin: Then I have no questions to ask.

(Witness excused)

[fol. 617] Mr. Watkins: The defendants rest, Your Honor.

The Court: Anything in rebuttal?

Mr. Rachlin: No, Your Honor, but I have some motions to make.

The Court: Very well. Let the jury step out in the hall.

(Jury was excused)

#### PLAINTIFF'S MOTION FOR A DIRECTED VERDICT AND OVERRULING THEREOF

Mr. Rachlin: Your Honor, at this time, plaintiffs, pursuant to Rule 50 of the Rules of Federal Procedure, move this Court for a directed verdict; and I would like, as required by the rules, to set forth my reasons for a motion for directed verdict.

The Court: All right.

Mr. Rachlin: Firstly, as a matter of law, the defendants have no defense to this proceeding.

Secondly, under the law of this state and under the laws of the United States generally, officers making arrests act at their own peril; and that applies to these officers, as well as to anybody else. The ruling by Judge Moore, which have been permitted in evidence, disposes of the propriety



of the rest. Any evidence that has been offered in that regard is not only irrelevant, but is in derogation of the ruling of Judge Moore. As a matter of fact, it is inter-[fol. 618] esting—

The Court: I don't care to hear argument. I will let you state your ground.

Mr. Rachlin: All right, yes, sir.

Next point: We have proved the elements of false arrest and false imprisonment. That is, we have shown by testimony of every person who has testified in this case, whether it be the plaintiffs themselves or the defendants, that the plaintiffs acted in an aptly proper manner. There is not even the slightest doubt about that.

We have proved that—and this is also undisputed—they were arrested by the defendants. We have proved that, as a result of this arrest, they were confined. We have proved, undisputed, that they were convicted in the court of Judge Spencer. Again, this is undisputed. And the fact that Judge Spencer may have acted without malice is of great inconsequence. This is not—In false arrest cases, malice is of no consequence whatsoever.

And we have proved that upon the appeal, as provided by the provisions and the laws of the State of Mississippi, they were found innocent of the charges, that there was no cause for the arrest.

[fol. 619] In other words, this is the tort we have shown. The motives of the defendants, whatever they may be, are irrelevant. The motives of the plaintiffs are also in the same token irrelevant. People have a right to be present anywhere they desire so long as they behave in a seemly manner. The testimony here is that at all times these plaintiffs behaved in a seemly manner.

Defendants' case, at its best and taking their testimony at this moment, shows that the plaintiffs behaved properly. It also shows that the defendants did not do their duty as a matter of law. Any wrongful acts that may have been committed were committed, not by the plaintiffs, but by other persons, and under the cases as decided as recently

as this morning, in the case in this very court, the McComb, Mississippi, injunction case, Douglas against CORE, where the injunction was only this morning set aside, the Court of Appeals of this very circuit made it very clear that, unless the parties themselves—

The Court: You need not argue that. I have read that case.

Mr. Rachlin: All right, Your Honor.

In any event, there was also Garner against Louisiana, [fol. 620] and Taylor against Louisiana, which further emphasize this point.

The defendant as a matter of law acted wrongfully. Their own testimony shows this. They made not the slightest effort to ask anybody else to remove from the station. That is, anyone who, according to their testimony, were the source of trouble.

Now, Your Honor on a motion for directed verdict is not even obliged to accept their testimony, and we say as a matter of law—

Mr. Watkins: Your Honor, I submit this is argument.

The Court: Yes, I don't care to hear argument. I would like for you to state your grounds.

Mr. Rachlin: All right, I will be very brief.

We say then, as a matter of law, the defendants failed in their duty, and the testimony is clear.

But in any event, going beyond that into the analysis of the testimony, the testimony, we think, on its face as demonstrated shows the real reason these persons were arrested was because they were a mixed group; that the police sign which everybody acknowledges was in front of that station shows that the duty of these officers was that [fol. 621] they had to arrest any persons of a non-white complexion coming into that station. That was an order, because that sign says "By Order of the Police Department." There is nothing voluntary about that sign at that time, and in fact, it is admitted that that sign is no longer there, for that reason. No matter how peaceful they were,

they would have been arrested because they could not have been more peaceful than they were.

With regard to our other cause of action, which I allude to at this moment, as a result of these acts which I have just previously described and that Your Honor has heard over the past several days, it's a matter of law not only was the common law of tort, of false arrest and imprisonment, committed by the defendants, but they have also violated the civil rights laws of the United States, in that they have deprived the plaintiffs of equal protection of the laws as guaranteed by the United States Constitution; that the arrest here, as the evidence showed, was solely on the basis that they were a mixed group; that had they not been a mixed group, they would not have been arrested.

We say then that as a matter of law under Rule 50 of the Rules of Civil Procedure, Your Honor must direct the verdict [fol. 622] for the plaintiffs.

Now, on the question of damages—

The Court: Certainly, I could not direct them to return damages, so that is not necessary.

Mr. Rachlin: I was going to say: On the question of amount of damages, we realize that is a matter for the jury to decide. A direction of verdict for the plaintiff as a matter of law is incumbent upon Your Honor at this time, in view of the evidence.

Mr. Watkins: Your Honor, we—

Mr. Rachlin: —I have another entirely different motion to make, not related to this at all.

The Court: You can go ahead and make yours now.

Mr. Rachlin: Make my second motion?

The Court: Yes.

#### **PLAINTIFF'S MOTION TO DISMISS, VACATE AND SET ASIDE THE DEFENSE OF PROBABLE CAUSE AND OVERRULING THEREOF**

Mr. Rachlin: My second motion is that the plaintiffs move that you dismiss and vacate and set aside the defense of probable cause, which Your Honor heard at the opening of the trial here.

We say as a matter of law the defense of probable cause is not permissible in a case of false arrest and false imprisonment. This is not a case of malicious prosecution. I very much think the defendants have confused the question [fol. 623] of malicious prosecution with false arrest and false imprisonment. We have cases and memoranda to submit to Your Honor which will show—and, for example, to indicate this, I am reading from Volume 22 of American—

The Court: —You need not bother to read that.

Mr. Rachlin: In any event, the defense of probable cause, even assuming that there was such in this case, is not a defense that can be raised in a false imprisonment and false arrest case, and the courts have distinguished false imprisonment and false arrest from malicious prosecution cases; and we therefore move that you dismiss, set aside, and vacate the defense of probable cause where at the opening of this trial you permitted the amendment to the Answer to be made. I therefore ask that it be vacated accordingly.

Mr. Watkins: We have two motions to make, Your Honor, if you care to hear them.

The Court: Very well.

**DEFENDANT SPENCER'S MOTION TO DIRECT A VERDICT AND ENTER JUDGMENT, ETC. AND OVERRULING THEREOF**

Mr. Watkins: Now comes the defendant Spencer and respectfully moves the Court to direct a verdict and enter judgment for said defendant on the ground that the evidence shows without dispute that he was acting as justice [fol. 624] of the peace and judge and had complete jurisdiction over the parties and subject matter, and for that reason alone would be immune from any liability whatever either under the civil rights statutes or false imprisonment.



**DEFENDANTS RAY, NICHOLS AND GRIFFITH MOTION TO DIRECT  
A VERDICT AND ENTER JUDGMENT, ETC. AND OVERRULING  
THEREOF**

Defendants respectfully move on behalf of the defendants Ray, Nichols and Griffith that the Court direct a verdict and a judgment for said defendants on the ground that the evidence shows without dispute that said defendants acted with probable cause in the belief that the plaintiffs were guilty of the offense for which they were arrested.

The Court: Let all the motions be overruled.

I think, Gentlemen, it is a question for the jury under the evidence in this case, and that the Court would be in error to direct a verdict or sustain either one of the motions in this case or to direct a verdict peremptorily for either side.

Upon an application for a peremptory instruction, the evidence is taken most strongly against the movant for a directed verdict and in favor of the opposite side. On the testimony in this case, the jury could return a verdict depending upon its finding for either the plaintiffs or the [fol. 625] defendants. I don't think that a bunch of fellows have a right to just arbitrarily refuse to move if they have been directed to do so by the policeman under circumstances which indicate that if they do not move on and separate, why, then there would be a riot or bloodshed. In this case, I think there is some testimony as such that the jury could draw the inference, if it wanted to, that these plaintiffs, along with others, conspired to come for the sole purpose of having themselves arrested and placed in jail in order to obtain publicity for the cause they were seeking, that they arbitrarily refused to move on or separate when they had been directed to do so by the policeman. If they think, from the evidence in this case, it was likely that a riot would have occurred and somebody would be hurt—the plaintiffs themselves or some outsider who was participating in the mob—even though they were wrongful, yet if a public officer can prevent a riot or a breach of the

peace, it is his duty to do so; and that these what might be known as breach of the peace statutes are valid exercise of the police powers of the state.

Now, that, briefly, is the ground upon which I base my ruling.

[fol. 626] I also think—I didn't give my reasons for admitting evidence which was repeatedly objected to, but now in the absence of the jury I can do it.

I think the evidence—and I take judicial knowledge of the serious condition that they had in Montgomery, Alabama, and Anniston, Alabama, just a short time before this, where they actually had bloodshed and the rioting was terrific—when the Freedom Riders arrived here, the police had been alerted, and as a result of their alertness and efforts of the policemen of the City of Jackson, there was no riot here, but nobody could tell in advance what would happen; and if the officers have reason to believe and foresee that there is high tension, when just almost a snap of the finger could set it off, if the officers can prevent that, I think it is their duty to do so.

So you have a situation here where I think all of these facts must be resolved by the jury, and I will therefore overrule all motions.

I will give you thirty minutes to the side to argue the case.

Mr. Rachlin: I want to thank Your Honor out of the presence of the jury for the courteous manner in which [fol. 627] you would indulge me when I sometimes may have, in the course of the trial, become a little overheated.

The Court: I appreciate your thanks, and I admire the skill and the vigor with which you try a lawsuit.

Mr. Rachlin: At the same time, I don't want Your Honor to think that I agree with your rulings in the case.

The Court: I understand that.

(The jury was recalled)

(Argument of counsel)

## COURT'S INSTRUCTIONS TO JURY

The Court: Gentlemen of the jury, you have heard all the testimony in the case, and I will now give the instructions of the Court, which will be the law to guide you in reaching a verdict in the case when you apply it to the evidence in this case.

The burden of proof is upon the plaintiff to prove by a preponderance of the evidence that a wrong was done to them by the defendants in the case. If they fail to do that, meet that burden, then your verdict would be for the defendant. If they prove by the preponderance of the evidence and under the law of the case that they have been done a wrong, then your verdict would be for the plaintiffs.

You are the sole judges, Gentlemen, of the weight of the [fol. 628] testimony and of the credibility of all of the witnesses in the case. You are entitled to consider the interest that any witness has in the outcome of the case in weighing his testimony. You are entitled to draw reasonable inferences from the testimony that was delivered on the witness stand and it is your duty to consider all the evidence and then determine what weight you will give to all of the evidence.

You are entitled to consider everything that you have been permitted to hear that has been received in evidence during the progress of the case.

The law of Mississippi is this—and I instruct you that Section 2087.5 of the Mississippi Code of 1942 Recompiled and as amended provides that whoever congregates with others in a public place or in any place of business engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby and who fail or refuse to disburse and move on when ordered so to do by any law enforcement officer of any municipality shall be guilty of a misdemeanor; and if you believe from the preponderance of the evidence in this case that on September 13, 1961, the plaintiffs congregated with others at the Trailways bus station in Jackson, Mis-

[fol. 629] Mississippi, under such circumstances that a breach of the peace may have been occasioned thereby, and that the plaintiffs failed or refused to disburse or to move on when ordered so to do by the police officers of the City of Jackson, Mississippi, then it would be your duty to return a verdict for the defendants in the case.

That is, you might say, the crux of the law, but, of course, everything I say to you is a part of the law, and all of the instructions will be taken together; but if a bunch of folks congregate with others engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby, and fail or refuse to disburse when ordered so to do by a law enforcement officer, he is guilty of a misdemeanor, and the officers under those circumstances would have the right to arrest him.

It is not contemplated by that law that any violence would be done to any particular person, but if a bunch of people gather at a public place under such circumstances as then existed that a breach of the peace may occur unless the officers have a right to tell them to move on, and if they refuse to do so, then, of course, they would be guilty of [fol. 630] the crime, and the officers would have the right to arrest them.

So that in this case, you know what all the facts are, and it is for you to determine what the facts are, and you are entitled to consider, as I have permitted to go to you, all the testimony beginning with the rides of the Freedom Riders when they came into Mississippi, and the tenseness, if you believe from the evidence such a situation was tense, then in weighing the act and conduct of the officers, you may take into consideration all those things that have been shown by the testimony; and you are not required to judge their conduct in that same cool, calm manner that you could now as you sit there in the jury box; but in weighing their conduct and weighing the testimony in the case, you place yourselves as if you were the officers under the circumstances with the knowledge those officers had and what you saw with your eyes; and if you believe that



the officers had occasion under all the circumstances to believe that unless those plaintiffs and their associates moved on a breach of the peace would occur, then the officers had a right to arrest them; if, on the other hand, there was nothing to cause the officers to believe that a breach of the peace would occur or that the violence of [fol. 631] some type would arise, then the officers would not have the right to arrest them. That is one of the main questions in the case.

Several instructions have been requested by the plaintiffs in the case, some of which I give and some of which I refused because I didn't think they stated the law; but the ones I read to you constitute the law, along with all other instructions that I will give you hereafter and with what I have heretofore said.

Instruction Number 1 requested by the plaintiffs in the case, I give:

**THE COURT INSTRUCTS THE JURY FOR THE PLAINTIFFS:**

That if you believe from the evidence that the Defendant Spencer illegally caused the conviction of the Plaintiffs, and that as a result the Plaintiffs were illegally deprived of their liberty, the jury shall find a verdict for the Plaintiffs.

That means, Gentlemen, that if you should believe from the evidence in this case that Judge Spencer illegally caused the conviction of the plaintiffs and as a result thereof they were illegally deprived of their liberty, you would find for the plaintiffs. If you believe that Judge [fol. 632] Spencer was acting illegally when he convicted them, and intended to do so, then of course you would find for the plaintiffs as against him, but if he was acting in good faith and simply made an error of judgment, then he wouldn't be liable.

There are many limitations upon the liability of a judge, because every judge makes some mistakes at some time or

other in his life, and that is not illegal, even though it is a mistake. So that is true in this case as to Judge Spencer. Number 2 requested by the plaintiffs, I give:

**THE COURT CHARGES THE JURY FOR THE PLAINTIFFS:**

That if Judge Russell Moore of the Hinds County Court on appeal from the convictions by defendant Spencer sitting ex officio Justice of the Peace and Police Justice of the City of Jackson found the Defendants not guilty of violating Section 2087.5 of the Mississippi Code of 1942 then probable cause for the arrest of Plaintiffs is not a defense and in such an event the jury shall find, if they believe the arrest of the plaintiffs were illegal, actual damages for the Plaintiffs.

On the other hand, if you believe from the evidence in [fol. 633] the case and from all the evidence you have heard that the arrest of the plaintiffs was not illegal but was legal and done in good faith, then you would find for the defendants.

Number 3 requested by the plaintiffs, I give:

**THE COURT CHARGES THE JURY FOR THE PLAINTIFFS:**

That if you believe from the evidence that Defendant Ray, Nichols, and Griffith illegally caused the arrest under Section 2087.5 of the Mississippi Code of 1942 of the Plaintiffs, and as a result of the aforesaid acts the Plaintiffs were illegally deprived of their liberty the jury shall find a verdict for the Plaintiffs against the Defendant.

That instruction means just what it says, that if those defendants illegally caused the arrest of the plaintiffs and deprived them illegally of their liberty, you would find for the plaintiffs. On the *otherhand*, if you believe from all the evidence in this case that they were legally arrested by the defendants, then your verdict would be for the defendants.

Instruction Number 4 requested by the plaintiff, I refuse. [fol. 634] Instruction Number 6 requested by the plaintiffs, I refuse.

Number 7 requested by the plaintiffs, I refuse.

Number 8 requested by the plaintiffs, I refuse.

Number 5 requested by the plaintiffs, I refuse.

Number 9, I refuse.

I further instruct you that if you find from a preponderance of the evidence in this case that at the time of the arrest of the plaintiffs by the defendants Ray, Griffith and Nichols said defendants had probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested, it is your duty to return a verdict for the defendants.

I further instruct you that if you find from a preponderance of the evidence in the case that at the time of the conviction of the plaintiffs by the defendant James L. Spencer the said defendant Spencer had probable cause to believe the plaintiffs were guilty of the offense for which they were convicted, it will be your duty to find a verdict for the defendant Spencer.

I further instruct you if you find from a preponderance of the evidence in this case that at the time of the arrest of the plaintiffs by the defendants Ray, Nichols and Griffith [fol. 635] said defendants had probable cause to believe and did believe in good faith that the plaintiffs were guilty of the offense for which they were arrested, then it is your duty to return a verdict for the defendants regardless of the outcome of the plaintiffs' criminal cases on appeal to the Hinds County Court.

I further instruct you if you find from a preponderance of the evidence that at the time of the conviction by the defendant Judge Spencer that the defendant Spencer believed and had probable cause to believe that the plaintiffs were guilty of the offense for which they were convicted, it is your sworn duty to return a verdict for the defendants regardless of the outcome of the plaintiffs' criminal case to the County Court of Hinds County.

I instruct you further the issue in this case is not whether the plaintiffs were guilty or innocent of the offense on which they were arrested and convicted, and the fact the

Hinds County Court dismissed the charges on appeal does not in itself entitle plaintiffs to recover in this action from the defendants or any of them, but that it is only probable presumption that conviction was not justified by the evidence.

With reference to the plaintiffs' claims under the Federal [fol. 636] Civil Rights statutes: That is one of the claims asserted by the plaintiffs in their complaint, that there was a violation of their civil rights. So I instruct you with reference to the plaintiff's claims under the Federal Civil Rights statutes that there is no liability on the part of the defendants unless the jury believes from a preponderance of the evidence in this case that the defendants intentionally deprived the plaintiffs of their civil rights.

I further instruct you with reference to the Federal Civil Rights statutes that an unsuccessful or unfounded state court action is not sufficient to create liability on the part of the defendants, and that it is the duty of the jury to find for the defendants unless the jury find from a preponderance of the evidence in the case that the action of the defendants constituted a discrimination between persons or classes of persons.

Gentlemen, if you find for the defendants, then that ends the lawsuit; but if you find for the plaintiffs, then it becomes necessary for you to determine the amount of the damages that you would award the plaintiffs in the case against the defendants; and I instruct you that if you find for the plaintiffs that you shall find such amount as will compensate them for the wrongs. In considering that, you [fol. 637] may take into consideration actual disbursement that occurs or expenses by plaintiffs for all these trips to Jackson from their homes; the expense of their stay in Jackson for the purpose of criminal hearings and trial; the expenses of the return to the homes of the plaintiffs from Jackson; and also such a reasonable amount as would compensate plaintiffs, in the opinion of the jury, for the illegal detention of the plaintiffs in the county jail; and, lastly, such a reasonable amount as will, in the opinion of



the jury, compensate the plaintiffs for any mental anguish and suffering and injury to character, if any, they may have suffered as a result of illegal arrest, conviction, and detention of the plaintiffs.

That is what you take into consideration in determining the amount of damages if you find for the plaintiffs.

If you find for the defendants, then, of course, you do not have to consider damages one way or the other.

It takes all twelve of you to arrive at a verdict, and it must be concurred in by all twelve of you. Nine of you cannot agree on a verdict as you do in the state court. It takes all twelve.

I am giving you two forms of verdicts, and you will use the one that follows your findings of fact under the law I [fol. 638] have given you. If you find for the plaintiffs, you use this form:

"We the jury find for the plaintiffs and assess their damages as follows:

"For Robert L. Pierson in the sum of .....

"For John B. Morris, in the sum of .....

"For James P. Bræden in the sum of .....

"For James G. Jones, Jr. in the sum of ....."

And you would fill in those blanks, and all of you sign that verdict and destroy the other one.

If you find for the defendants, then you would use this form:

"We the jury find for the defendants J. L. Ray, J. B. Griffith, D. A. Nichols, and James L. Spencer," and all of you sign that verdict and destroy the other form.

Very well, Mr. Marshal, carry the jury to the jury room.

(The Jury Retired)

The Court: Any exceptions by the plaintiff to the charge of the Court?

### EXCEPTIONS TO CHARGE OF COURT

Mr. Rachlin: Yes, sir. First, I would like to except from your denial of the specific charges we submitted to you, and I ask for the sake of the record that they be at least [fol. 639] included in the record, even though the jury doesn't have them before them.

The Court: Yes, sir, they become a part of the record.

Mr. Rachlin: Secondly, I would like to except specifically to the comments made by the Court as part of the charge of the Court that related to the three charges that were read by you that were granted us.

Thirdly, I think your charge was improper in that it did not let the jury give adequate consideration to the possibility of a verdict for the plaintiffs. I think a reading of the charge would indicate that all the possibilities were concerned with verdicts for the defendants.

Fourthly, I think there was an inconsistency in your charge with regard to the charge that concerned itself with—which we submitted which related to Judge Moore's decision, and the comment in that charge we submitted about lack of probable cause. Your charge later about probable cause was completely inconsistent each with the other.

I would like then to enter a general objection to your charge because I am afraid my memory, being human, fails me, and there are certain specific things I do not at this [fol. 640] moment recall; but those are my exceptions, and I thank Your Honor.

The Court: Let the exceptions be noted, and the Court will adhere to its ruling.

While it's not necessary to comment, I don't think there is any inconsistency in the charge given for you and the charge given for the defendants, with reference to the lack of probable cause. I at least endeavored to avoid any conflict.

So let the exceptions be noted, and I adhere to the ruling. Any exceptions by the defendant?

Mr. Watkins: To one charge requested by the defendants, it being their second instruction, to this effect: If

Judge Russell Moore in Hinds County Court, on appeal from Judge Spencer sitting ex officio Justice of the Peace and police justice of the City, found the defendants not guilty of violation of Section 2087.5 of the Mississippi Code of 1942, then probable cause for the arrest of the plaintiffs was not a defense, and in such event the jury shall find, if they believe the arrest of the plaintiffs was illegal, actual damages for the plaintiff.

I object to it for the reason that although the word [fol. 641] "illegal" is thrown in at the last of the instruction, I interpret that instruction to tell the jury that just because Judge Russell Moore may have found them not guilty on appeal, that the defense of probable cause did not exist; whereas, I don't think his findings on appeal have anything to do with whether the officers had or did not have probable cause to make the arrest.

The Court: Let the exceptions be noted, and the Court will adhere to its ruling.

Mr. Rachlin: May I at this time renew my motion for a directed verdict and for dismissal of the defense of probable cause?

The Court: Yes, and I will adhere to my ruling. I made and deny the motion, and adhere to the ruling I made on Mr. Watkins' request for a directed verdict on behalf of the defendants.

Let the case now be submitted to the jury.

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(The jury returned with a verdict)

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**RENEWAL OF MOTION FOR A DIRECTED VERDICT, TO SET ASIDE AND VACATE THE VERDICT OF THE JURY AND FOR A NEW TRIAL AND OVERRULING THEREOF**

Mr. Rachlin: At this time I would like to renew our motion for a directed verdict, as provided in the Rules, and also move to set aside and vacate the verdict of the jury [fol. 642] on the grounds that it is against the evidence, contrary to the weight of the evidence, and for all the

reasons as set forth in the Federal Rules of Procedure and all applicable rules thereto; and at the same time I make a motion for a new trial, and also move to set aside the verdict of the jury for the reasons that I moved during the trial, for which I then asked for a mistrial, on the grounds that a substantial amount of evidence which was prejudicial was improperly admitted in evidence in violation of the rules of evidence and in violation of the rules under which this court operates.

The Court: You desire any time in which to brief that, or do you want a ruling on it now?

Mr. Rachlin: Just give a ruling on it right now.

The Court: Well, I have given a great deal of thought to the case, and I think my rulings were all correct. Unless I found out where I committed an error, then I would certainly adhere to the rulings I made.

Mr. Watkins, do you want to brief it, or would you rather have a ruling now?

Mr. Watkins: No, sir, I would like to have a ruling now.

The Court: Very well. I will rule on the motion now.  
[fol. 643] As I said a moment ago, I have given the case careful thought and considerable research on the questions involved in the case, and I am of the opinion that all the rulings I made were correct and that no error was committed, so I, therefore, overrule each motion. That is to say, I will overrule the motion for a judgment notwithstanding the verdict, and I will overrule the motion for a new trial.

So an order may be drawn first for a judgment in accord with the verdict of the jury, for the defendants, and then an order may be drawn overruling the motion for a new trial and overruling the motion for a judgment or directed verdict for the plaintiffs wherein he requested that the judgment be vacated and set aside and to find a verdict for the plaintiffs notwithstanding the verdict. So each motion is overruled.



[fol. 644] Court Reporter's Certificate (omitted in printing).

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[fol. 645] IN UNITED STATES DISTRICT COURT  
JURY VERDICT—Filed May 16, 1963

We, the Jury, Find for the Defendants, J. L. Ray, J. B. Griffith, D. A. Nichols, and James L. Spencer.

- |                          |                       |
|--------------------------|-----------------------|
| 1. William V. Murtugh    | 7. Ray J. McEwen      |
| 2. Frederick C. Fletcher | 8. James E. Shoemaker |
| 3. Lynwood L. Denson     | 9. Elmer Boyd         |
| 4. Roy C. Davis          | 10. J. F. Edwards     |
| 5. Neville Garner        | 11. Ben H. Pace       |
| 6. Clifton E. Rhodes     | 12. Arthur K. Strong  |
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IN UNITED STATES DISTRICT COURT  
JUDGMENT—May 17, 1963

This Action came on for trial on its merits, the plaintiffs and the defendants having announced ready for trial after issue joined, and a jury, composed of Ben H. Pace and eleven others, having been impaneled as provided by law [fol. 646] and accepted by the plaintiffs and the defendants, and the Court and jury having heard all of the evidence and the arguments of counsel, and the jury having received the instructions of the Court, retired to consider their verdict and presently returned into open Court the following verdict:

“We, the jury, find for the defendants, J. L. Ray, J. D. Griffith, D. A. Nichols, and James L. Spencer.”

and which verdict was duly received and entered as the verdict of the jury in said action.

It is, therefore, ordered and adjudged that the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., and each of them, do have and recover nothing of and from the defendants, J. L. Ray, J. D. Griffith, D. A. Nichols, and James L. Spencer, or either of them, and that said defendants go hence without delay, and all Court costs herein incurred be and the same are hereby taxed against the plaintiffs, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., for all of which let execution issue, as provided by law.

Ordered and Adjudged, this 17th day of May, 1963.

S. C. Mize, United States District Judge.

[fol. 647] IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION FOR NEW TRIAL—May 25, 1963

This cause came on for trial on its merits, the plaintiffs and the defendants having announced ready for trial after issue joined, and a jury, composed of Ben H. Pace and eleven others, having been impaneled as provided by law and accepted by the plaintiffs and the defendants, and the Court and jury having heard all of the evidence and the arguments of counsel, and the jury having received the instructions of the Court, retired to consider their verdict and presently returned into open Court the following verdict:

"We the jury, find for the defendants, J. L. Ray, J. D. Griffith, D. A. Nichols, and James L. Spencer."

and which verdict was duly received and entered as the verdict of the jury in said action.

The plaintiffs having then and there made a motion for a new trial, stating the following reason therefor: verdict was against the weight of the evidence, that the instructions given the jury was given the jury in a manner which

was prejudicial to the plaintiffs, and that the entire trial was conducted in such a manner that it was prejudicial to the plaintiffs,

It Is Therefore Ordered and Adjudged that the motion of the plaintiffs for a new trial be and the same is hereby denied.

[fol. 648] Ordered and Adjudged, this 25th day of May, 1963.

S. C. Mize, United States District Judge

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IN UNITED STATES DISTRICT COURT

NOTICE OF APPEAL—Filed June 10, 1963

Notice is hereby given that Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr., Plaintiffs above named, hereby appeal to the United States Court of Appeals for the Fifth Circuit from the Final Judgment entered in this action on May 21, 1963.

Dated: June 10, 1963.

L. H. Rosenthal, and Carl Rachlin, Attorneys for Appellants, Robert L. Pierson, John B. Morris, James P. Breeden, and James G. Jones, Jr.

L. H. Rosenthal, 242½ East Capitol Street, Jackson, Mississippi; Carl Rachlin, 280 Broadway, New York 7, New York.

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[fol. 649] Designation of Record on Appeal—Filed June 17, 1963 (omitted in printing).

[fol. 650] Order Extending Time for Filing Record—July 3, 1963 (omitted in printing).

Order Extending Time for Filing Record—September 7, 1963 (omitted in printing).

[fol. 652] Certificate of Service of Record (omitted in printing).

[fol. 653]

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IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 21325

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ROBERT L. PIERSON, ET AL., Appellants,

versus

J. L. RAY, ET AL., Appellees.

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Appeal from the United States District Court  
for the Southern District of Mississippi.

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ORDER DENYING MOTION TO DISMISS—Filed March 25, 1964  
Before HUTCHESON, JONES and WISDOM, Circuit Judges.

BY THE COURT:—

On Consideration of the motion of appellees to docket and dismiss the appeal in the above entitled and numbered cause, and of the affidavit of appellants in opposition, It Is Ordered that said motion to dismiss be, and the same is hereby Denied.

[fol. 654] Minute Entry of Argument and Submission—  
November 17, 1964 (omitted in printing).



[fol. 655]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 21325

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ROBERT L. PIERSON, ET AL., Appellants,

VERSUS

J. L. RAY, ET AL., Appellees.

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Appeal from the United States District Court for the  
Southern District of Mississippi.

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OPINION—October 25, 1965

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Before JONES and BELL, Circuit Judges, and HUNTER,  
District Judge.

JONES, Circuit Judge: The appellants brought an action against the appellees alleging a common-law tort claim for false imprisonment and a statutory<sup>1</sup> claim for damages for a deprivation of civil rights. The appellants were clergy-[fol. 656] men. One of them is a Negro. The appellees Ray, Griffith and Nichols were police officers of the City of Jack-

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<sup>1</sup> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U.S.C.A. § 1983.

son, Mississippi. The appellee Spencer was the Police Justice and Ex-Officio Justice of the Peace, Hinds County, Mississippi.

Fifteen clergymen in clerical attire, including the appellants; were participants in a so-called prayer pilgrimage. Most of the twenty-six who were accepted for the pilgrimage resided in Northern states. The pilgrimage was to start at New Orleans and go to Dearborn, Michigan. A bus was chartered from New Orleans to Jackson, but not beyond. At Jackson the fifteen clergymen went by taxicab to the Continental Bus Terminal. They had bus tickets for transportation to Chattanooga, Tennessee. They arrived at the bus terminal in Jackson about 11:20 o'clock in the forenoon of September 13, 1961. The Chattanooga bus was scheduled to depart shortly after noon.

The prayer pilgrimage had been well publicized in advance. The appellees Griffith and Nichols had been sent to the bus station. Upon or soon after their arrival the fifteen clergymen started toward the coffee shop. They were stopped by the two officers and remained in the passageway leading to the coffee shop. The officers directed or ordered them to "move on." The clergy stayed at the place where they were halted. One of the officers telephoned the police station and soon after the appellee Ray arrived. He was then a captain of police. At the time of the trial of the cause in the district court he was deputy chief of police. When the group arrived there were fifteen to twenty people in the [fol. 657] bus station. Twenty-five to thirty people, all of whom were white, followed them in. There was testimony that the people in the station were "mumbling in a very ugly mood," that they were "disturbed," that they were "in a turmoil," and that quite a disturbance was caused. The group of prayer pilgrims were completely orderly. Captain Ray told the clergy to "move along" and upon their failure and refusal to do so, they were arrested and taken to jail. An affidavit was filed by Captain Ray charging them with

disorderly conduct under a Mississippi statute.<sup>2</sup> The appellants were tried on September 15, 1961, before the appellee, Judge Spencer, and found guilty. Each of the appellants was sentenced to four months in jail and fined two hundred dollars. Appellants Breedon, Morris, and Pierson were released on bond on September 19, and the appellant Jones was released on bond on September 29, 1965. Bond was available to all the appellants and it was by their choice that they remained in jail rather than being sooner released on bond. The appellants took an appeal to the County Court [fol. 658] of the First Judicial Court of Hinds County, where the appeal was by way of a de novo trial. The case of the appellant Jones was first heard by the County Judge, who found him not guilty. The prosecution then moved that the charges against the other appellants be nolle prosequi, and the motion was granted. The appellants brought this action, each claiming \$11,001 damages. The cause was tried before a jury which returned a verdict for the appellees. A judgment was entered on the verdict from which this appeal has been taken.

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<sup>2</sup> 1. Whoever with intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others in . . . any hotel, motel store, restaurant, lunch counter, cafeteria, sandwich shop, . . . or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, . . . shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars (\$200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment; . . . Miss. Code 1942 Recompiled § 2087.5.

In a pre-trial deposition of the appellee Spencer, he was asked whether a citizen has a right to disobey an unreasonable or improper order of a police officer, as in a case in which it was clear that the order of the policeman to move on was improper. He was asked to answer the question as a judge. His answer was that he thought the citizen should obey the officer and later seek redress. The appellants were not permitted to question the appellee Spencer as to this opinion when he was called as an adverse witness at the trial. The appellants contend that the ruling was erroneous. The refusal of the district court to permit the question was not error. Both at the taking of the deposition and at the trial the questions were propounded to the witness in his capacity as a judge. Whether or not a judicial opinion is erroneous is not a question to be resolved by a jury. A judge's function is to decide cases, but not to answer academic or hypothetical questions.

The appellee Spencer filed a motion to dismiss the complaint as to him on the ground that his actions were [fol. 659] judicial and he was immune from any civil liability. The motion was deferred for decision until the trial of the case on the merits. No ruling on the motion was made. The judgment for the appellants made the question unimportant, but we think it is appropriate to say that the motion should have been granted. By the leading case of *Bradley v. Fisher*, 13 Wall. 335, 20 L. Ed. 646, the immunity was established of judges of courts of superior or general jurisdiction from liability for damages growing out of the performance of their judicial duties. The doctrine has been extended to the judges of all courts. *Barr v. Matteo*, 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434; *Yaselli v. Goff*, 2nd Cir. 1926, 12 F.2d 396, aff. 275 U.S. 503, 48 S. Ct. 155, 72 L. Ed. 395. The rule applies to city magistrates and municipal judges. *Cuiksa v. City of Mansfield*, 6th Cir. 1957, 250 F. 2d 700, cert. den. 356 U.S. 937, 78 S. Ct. 779, 2 L. Ed. 2d 813; *Reilly v. United*



*States Fidelity & Guaranty Co.*, 9th Cir. 1926, 15 F. 2d 314; 35 C.J.S. 707, False Imprisonment § 44. Such is the law in Mississippi. *Bell v. McKinney*, 63 Miss. 187. The judicial immunity applies in civil rights actions as well as at common law. *Norton v. McShane*, 5th Cir. 1964, 332 F.2d 855, cert. den. 380 U.S. 981, ..... S. Ct. ...., 14 L. Ed. 2d 274. If a judicial officer acts in the clear absence of all jurisdiction and authority he incurs liability for a false imprisonment caused by him. 35 C.J.S. 707, False Imprisonment § 44. The Mississippi statute, Sec. 2087.5, on its face, was sufficient to justify the action taken by Judge Spencer. The statute had not then been held invalid. It was subsequently upheld by the Supreme Court of Mississippi in *Thomas v. State*, 160 So. 2d 657, *Farmer v. State*, 161 So. 2d 159, and *Knight v. State*, 161 So. 2d [fol. 660] 521. We think it cannot be said that there was a clear absence of jurisdiction in the appellee Spencer at the time action was taken by him although, since this cause was argued before us, the statute was held invalid as applied to circumstances such as those in this case. *Thomas v. Mississippi*, 380 U.S. 524, 85 S. Ct. 1327, 14 L. Ed. 2d 265. See *Boyniton v. Virginia*, 364 U.S. 454, 81 S. Ct. 182, 5 L. Ed. 2d 206. A judge should not be put to a correct determination of the validity of a criminal statute at the hazard of being cast in damages for the making of a wrong guess. We think it was proper to defer a ruling on the motion of the appellant Spencer but it should have been granted when the evidence was in.

The doctrine of immunity which has long prevailed with respect to judicial officers, has been extended to other officers of government whose duties are related to the judicial process. *Barr v. Matteo*, 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434, *Norton v. McShane*, 5th Cir. 1964, 332 F.2d 855, cert. den. 380 U.S. 981, ..... S. Ct. ...., 14 L. Ed. 2d 274;<sup>2</sup> *Gregoire v. Biddle*, 2nd Cir. 1949, 177 F.2d

<sup>2</sup> In *Norton v. McShane* a claim was asserted against Federal marshals. For Erie-Tompkins purposes it was a Mississippi case.

579, cert. den. 339 U.S. 949, 70 S. Ct. 803, 94 L. Ed. 1363. In this cause, as in *Norton v. McShane*, *supra*, the doctrine of official immunity protects the police officers from common-law false-imprisonment liability. The rule may be otherwise where a claim is asserted under a Civil Rights Act. In *Norton v. McShane*,<sup>4</sup> *supra*, it was said:

"While it is clear that the common-law immunity afforded legislative and judicial officers applies in suits [fol. 661] under the Civil Rights Acts, there remains much uncertainty as to the extent to which immunity for subordinate executive officials applies, if it applies at all." 332 F.2d 855, 860-861.

The uncertainty then existing still prevails. 15 Am. Jur. 2d 452 et seq., Civil Rights § 67. It might seem to be an anomaly of the law that in the case of a Federal police officer acting in Mississippi, an extremely aggravated wrong must remain unredressed because of public policy, as was held in *Norton v. McShane*, *supra*; while in the case before us, municipal police officers, acting in Mississippi, may be required to answer in damages for acting in good faith under a state statute which they were entitled to presume to be valid. Yet such appears to be the law which controls our decision on this issue in this appeal.

By dictum in *Hoffman v. Halden*, 9th Cir. 1959, 268 F.2d 280, it was indicated that by the Civil Rights Act liability was imposed on state officers for acts within as well as without the scope of their authority if done under color of law. In *Monroe v. Pape*, 365 U.S. 167, 81 S.Ct. 473, 5 L. Ed. 2d 492, it was held that under 42 U.S.C.A. § 1983 a cause of action may be asserted against a state police officer acting under color of state law for dep-

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<sup>4</sup> It may be noted that *Norton v. McShane* was decided more than a year after *Nesmith v. Alford*. The writer of the *Norton* opinion was one of the judges of the panel that decided *Nesmith*.

privation of a Fourteenth Amendment Constitutional right whether or not done wilfully. See *Cohen v. Norris*, 9th Cir. 1962, 300 F.2d 24. Cf. *Davis v. Turner*, 5th Cir. 1952, 197 F.2d 847. Inherent in the Monroe holding is the principle that good faith and reliance upon a state statute subsequently declared invalid are not available as defenses. [fol. 662] *Monroe v. Pape* did not expressly rule upon the question of immunity but the result necessarily implies rejection of such a defense as a general proposition. *Cohen v. Norris*, *supra*. The defense of immunity is not available to the police officer appellees in this cause.

While one of the appellants was on the stand as a witness for himself and the other appellants, he was shown a copy of the Daily Worker, setting out nine demands of the Communist party with respect to racial discrimination, and asked if he agreed with the demands. The witness was required to answer over objection. His answer was, as to all but one, that he agreed and as to it he was undecided. The appellants then moved for a mistrial. The motion was denied. The interrogation of the witness as to his beliefs regarding racial segregation and the like seem wholly irrelevant to any of the issues of the case. It might be urged with plausibility that the error in permitting the questions to be asked and requiring them to be answered was not prejudicial. We cannot agree. The permitting of the use of the Communist party organ, the Daily Worker, as the source of the inquiries could not be other than prejudicial error.

The trial court permitted one of the appellants and their witnesses to be questioned regarding racial strife in the City of Jackson occurring in connection with the visitation of Freedom Riders, so called, some time prior to the episode from which this action arose. Appropriate objections were made and overruled. No connection was shown between the Freedom Riders and the Prayer Pilgrims, and the appellants denied any connection. It was not shown that [fol. 663] the earlier incidents were sufficiently close in point

of time to have any relation to the situation with which we are dealing. It was error not to have sustained the objections.

The appellants here complain of a charge<sup>5</sup> given by the district court with respect to the Mississippi statute. No specific objection was made to the charge nor grounds of objection assigned.<sup>6</sup> It may be observed, in connection with the instruction, that at the time of the trial the

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<sup>5</sup> The law of Mississippi is this—and I instruct you that Section 2087.5 of the Mississippi Code of 1942 Recompiled and as amended provides that whoever congregates with others in a public place or in any place of business engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby and who fail or refuse to disburse and move on when ordered so to do by any law enforcement officer of any municipality shall be guilty of a misdemeanor; and if you believe from the preponderance of the evidence in this case that on September 13, 1961, the plaintiffs congregated with others at the Trailways bus station in Jackson, Mississippi, under such circumstances that a breach of the peace may have been occasioned thereby, and that the plaintiffs failed or refused to disburse or to move on when ordered so to do by the police officers of the City of Jackson, Mississippi, then it would be your duty to return a verdict for the defendants in the case.

That is, you might say, the crux of the law, but, of course, everything I say to you is a part of the law, and all of the instructions will be taken together; but if a bunch of folks congregate with others engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby, and fail or refuse to disburse when ordered so to do by a law enforcement officer, he is guilty of a misdemeanor, and the officers under those circumstances would have the right to arrest him.

It is not contemplated by that law that any violence would be done to any particular person, but if a bunch of people gather at a public place under such circumstances as then existed that a breach of the peace may occur unless the officers have a right to tell them to move on, and if they refuse to do so, then, of course, they would be guilty of the crime, and the officers would have the right to arrest them.

<sup>6</sup> A general objection, which counsel attempted to interpose because of his fear that his memory had failed him, is unavailing. Fed. Rules Civ. Proc. 51, 28 U.S.C.A.



[fol. 664] Mississippi statute, Section 2087.5, had not been held invalid. The instruction, in the form given, would not now be proper.

The appellants complain of the trial court's instruction on probable cause, and an objection to it was made and preserved. If the trial court had been correct in its assumption that Section 2087.5 was a valid statute defining a misdemeanor, then the instruction would have been proper. A police officer is permitted to arrest, without a warrant, for misdemeanors committed in his presence. Is he to be required in order to be free from liability for damages, to have his action vindicated by a judgment of conviction, an affirmance on appeal, and a Supreme Court determination of the validity of the statute under which he has acted? The authorities are not uniform as to whether a public officer can be held civilly liable for acting under the authority of a statute subsequently held invalid. *Miller v. Stinnett*, 10th Cir. 1958, 257 F.2d 910. The rule followed in Mississippi, which may be the minority rule but which is controlling here, is that a public officer is not charged with the duty of determining at his peril whether a statute is valid when he is acting under it. *Golden v. Thompson*, 194 Miss. 241, 11 So. 2d 206. Thus the challenged instruction was not improper when given although if it should be requested now, since the statute has been declared invalid, it would be couched in different terms; although the conduct of the appellees would [fol. 665] be tested by the situation existing at the time of their action.

The appellant Morris was the executive director of the society which organized and supervised the prayer pilgrimage. The court admitted in evidence, over timely objec-

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"I further instruct you that if you find from a preponderance of the evidence in this case that at the time of the arrest of the plaintiffs by the defendants Ray, Griffith and Nichols said defendants had probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested, it is your duty to return a verdict for the defendants.

tions, his letters and memoranda used in organizing and planning the pilgrimage. From these exhibits and from the testimony of the appellant Morris it could have been inferred that one of the purposes, perhaps the prime purpose of the pilgrimage was to have at least ten of the group jailed in Jackson. The length of time for remaining in jail was discussed. Arrangements in advance for bail bond and for counsel had been made, or so it could have been found. In one of the communications it was said:

"All in all, I think you can count on becoming familiar with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for us when he said, 'About jail— Here I am, send me. I'm not brave but I'm obedient.'"

The evidence would have permitted a finding, not only that being jailed in Jackson was a possibility, but that the participants would go to Jackson for the purpose of procuring their jailing and would so conduct themselves as to assure the achievement of that result. We do not say that this evidence required such a finding; we say that it permitted it. If the appellants' claims can be defeated by a showing of a plan and purpose of being arrested and jailed, then the evidence was properly admitted. We think [fol. 666] that such a showing would preclude recovery and the question is presented by the appellants' specification of error next considered.

The remaining assignment of error is the denial by the trial court of the appellants' motion for a directed verdict on the issue of liability, leaving only the question of damages to the jury. In urging this point, the appellants rely upon *Nesmith v. Alford*, 5th Cir. 1963, 318 F.2d 110, cert. den. 375 U.S. 975, 84 S.Ct. 489, 11 L. Ed. 2d 420. In *Nesmith* the plaintiffs had been arrested and placed in jail. They sued police officers for malicious persecution, false imprisonment, and deprivation of civil rights. This court held that the plaintiffs, Nesmith and his wife, were entitled to a directed verdict as a matter of law as to

liability on the common-law claim for false imprisonment and, as we read the court's opinion, on the civil rights claim. The false-imprisonment common-law claim is a state cause of action. The *Nesmith* case was decided under the law of Alabama. This case arises under the law of Mississippi. It is our considered view that under the law of Mississippi the appellants were not entitled to a directed verdict of liability on the false-imprisonment claim. As we have pointed out, there was evidence from which it might have been found that the appellants went to Jackson, not only contemplating the possibility of being jailed, but with a design and plan that they should be. If they had such a design and plan, are they entitled to recover damages for having accomplished their objective?

The question is not whether the appellants could lawfully dramatize their protests against racial inequality by [fol. 667] attempting to eat in a wrongfully segregated lunch room in a bus terminal of an interstate passenger carrier. It goes without saying that they might do so. Rather the question is whether, in so doing, can they include in their program a planned arrest and confinement and then successfully rely upon such confinement as the basis for recovery in an action for damages for false imprisonment. Throughout the common law of torts the maxim, *volenti non fit injuria*, is applicable. It is applicable to false imprisonment. 35 C.J.S. 712, False Imprisonment § 46 c. one who has invited or consented to arrest and imprisonment should be denied recovery. *Hulberstadt v. Nelson*, 34 Misc. 2d. 472, 226 N.Y.S. 2d 100; *Greene v. Fankhauser*, 137 App. Div. 124, 121 N.Y.S. 1004; *Stork v. Evert*, 47 Ohio App. 256, 191 N.E. 794. The principles set forth in the recent case of *State v. Moore*, ..... Miss. ...., 174 So. 2d 352, show a recognition of the rule as applicable in Mississippi, although under a factual situation different from the case before us. An earlier decision, and one more nearly in point on its facts, is *Williamson v. Wilcox*, 63 Miss. 335, where it was said, "For a purely private injury one cannot maintain a suit when he has consented to

the act which produced the injury." Whatever the law may be in some jurisdictions,\* we conclude that, under the law of Mississippi, to which we look for the governing common-law rules of law, proof that the plaintiffs invited or consented to arrest and confinement precludes recovery for false imprisonment. Since, as is said in *Monroe v. Pape, supra*, "Section 1979 [42 U.S.C.A. § 1983] [fol. 668] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." We think the tort principle of *volenti non fit injuria* applies to the claim asserted for a civil rights violation under 42 U.S.C.A. § 1983 as well as to the common-law cause of action. For reasons elsewhere discussed in this opinion, we hold that the appellees are immune from liability for false imprisonment at common law but not from liability for violations of the Federal statutes on civil rights. It therefore follows that there should be a new trial of the civil rights claim against the appellee police officers so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment.

The judgment of the district court will be reversed and remanded so that the complaint and the action may be dismissed as to the appellee Spencer, and a new trial had as to the other appellees in accordance with this opinion.

REVERSED AND REMANDED.

\* As in Alabama. See *Nesmith v. Alford*, 5th Cir. 1963, 318 F.2d 110.

\* Questions as to liability under Civil Rights Acts are Federal questions to be determined by Federal Law. *Nesmith v. Alford, supra*, n. 8; 15 Am. Jur. 2d 453, Civil Rights § 67.



[fol. 669]

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

October Term, 1964

No. 21325

D. C. Docket No. 3315—Civil Action

ROBERT L. PIERSON, ET AL., Appellants,

versus

J. L. RAY, ET AL., Appellees.

Appeal From the United States District Court for the  
Southern District of Mississippi

Before: JONES and BELL, Circuit Judges, and HUNTER,  
District Judge.

JUDGMENT—October 25, 1965

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

On Consideration Whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and it is hereby remanded to the said District Court so that the complaint and the action may be dismissed as to the appellee Spencer,

and a new trial had as to the other appellees, in accordance with the opinion of this Court;

It is further ordered and adjudged that the appellees, Ray, Griffith and Nichols, be condemned to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

October 25, 1965

Court Costs:

Docketing cause, etc. .... \$25.00

Issued as Mandate: Nov. 16, 1965

[fol. 670] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 671]

SUPREME COURT OF THE UNITED STATES

No. ...., October Term, 1965

ROBERT L. PIERSON, ET AL., Petitioners,

vs.

J. L. RAY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR  
WRIT OF CERTIORARI—January 21, 1966

Upon Consideration of the application of counsel for petitioner(s),

It Is Ordered that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including February 24, 1966.

Hugo L. Black, Associate Justice of the Supreme Court of the United States.

Dated this 21st day of January, 1966.

[fol. 672]

SUPREME COURT OF THE UNITED STATES

No. ...., October Term, 1965

ROBERT L. PIERSON, ET AL., Petitioners,

VS.

J. L. RAY, ET AL.

ORDER EXTENDING TIME TO FILE PETITION FOR  
WRIT OF CERTIORARI—February 24, 1966

Upon Consideration of the application of counsel for  
petitioner(s),

It Is Ordered that the time for filing a petition for writ  
of certiorari in the above-entitled cause be, and the same  
is hereby further extended to and including February 28th,  
1966.

Hugo L. Black, Associate Justice of the Supreme  
Court of the United States.

Dated this 24th day of February, 1966.

[fol. 673]

SUPREME COURT OF THE UNITED STATES

No. 1074, October Term, 1965

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ROBERT L. PIERSON, ET AL., Petitioners,

v.

J. L. RAY, ET AL.

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ORDER ALLOWING CERTIORARI—May 16, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is consolidated with No. 1155 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



[fol. 674]

SUPREME COURT OF THE UNITED STATES

No. 1155, October Term, 1965

J. L. RAY, ET AL., Petitioners,

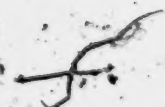
v.

ROBERT L. PIERSON, ET AL.

ORDER ALLOWING CERTIORARI—May 16, 1966

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted. The case is consolidated with No. 1074 and placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.



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JOHN F. DAVIS, CLERK

IN THE

**Supreme Court of the United States**

October Term, 1965

No.  79

**ROBERT L. PIERSON, et al.,**

*Petitioners,*

v.

**J. L. RAY, et al.,**

*Respondents.*

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**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT**

---

**CARL RACHLIN,**

No. 38 Park Row,

New York, N. Y. 10038.

**MELVIN WULF,**

No. 156 Fifth Avenue,

New York, N. Y.

*Of Counsel:*

**FREDERICK A. O. SCHWARTZ, JR.,**

**LEONARD H. ROSENTHAL,**

**STEPHEN M. NAGLER.**

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### REASONS FOR GRANTING THE WRIT

- I. Certiorari should be granted to review the holding that a police justice who acts under color of state law or custom knowingly to deprive persons of rights secured by the Constitution and laws of the United States is "immune from liability under a statute that applies, without exception, to "every" person, that was said by the Congress that enacted it to apply to judges and that was intended to create a remedy for sham justice in the courts 12
- II. Certiorari should be granted to review the holding that policemen are not liable in damages for depriving persons of their constitutional rights if the persons so deprived know that the policemen might disregard their constitutional rights but nevertheless chose to exercise those rights ..... 16

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IN THE  
**Supreme Court of the United States**

**October Term, 1965**

No. \_\_\_\_\_

**ROBERT L. PIERSON, et al.,**

*Petitioners,*

v.

**J. L. RAY, et al.,**

*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE  
UNITED STATES COURT OF APPEALS FOR THE  
FIFTH CIRCUIT**

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit, entered in the above-entitled case on October 25, 1965.\*

**Citations to Opinion Below**

The District Court for the Southern District of Mississippi, Jackson Division, wrote no opinion. Its judgment

\* In addition to the persons named in the caption, there are the following additional petitioners and respondents: *Petitioners:* John B. Morris, James P. Breeden and James G. Jones, Jr.; *Respondents:* J. B. Griffith, D. A. Nichols and James L. Spencer.

and order is at R. 645-648.\* The opinion of the Circuit Court of Appeals, printed as Appendix A hereto, is reported at 315 F. 2d 213.

### **Jurisdiction**

The judgment of the Circuit Court of Appeals was entered on October 25, 1965. On January 21, 1966, Mr. Justice Black signed an order extending petitioners' time within which to file a petition for certiorari to and including February 24, 1966. Jurisdiction of this Court is invoked under 28 U. S. C. Section 1254(1).

### **Questions Presented**

1. Whether a municipal police justice (a) alleged to have conspired with police officers to have white and Negro Episcopal ministers arrested and knowingly convicted by him and sentenced to jail for seeking to use the waiting room of an interstate bus station that was posted "White Waiting Room Only—by Order of the Police Department" in order to enforce the segregation laws, customs, policies and usages of the State of Mississippi, and (b) whose conviction of the ministers for violating a statute that prohibited congregating under such circumstances that a breach of the peace might be caused was subsequently reversed at a trial *de novo* at the close of the prosecution's case on the ground that there was no evidence against the ministers, is immune from a suit for damages under 42 U. S. C. §1983, which (1) provides without exception that

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\* References preceded by "R" are to the pages of the mimeographed record used on the appeal to the Fifth Circuit.

"every" person who commits such an act shall be liable in damages, and (2) was thought by the Congress that enacted it to apply to such conduct by such judges.

2. Whether police officers are immune from liability for damages under 42 U. S. C. §1983 for acting under color of state law and custom to deprive persons of rights secured by the United States Constitution and laws because those persons had reason to believe that police officers might arrest and jail them illegally in order to preserve segregation but nevertheless chose to exercise their constitutional right to travel as an integrated group.

3. Whether if under state law police officers are not liable in damages for false arrest when the "breach of the peace" statute under which they purported to make the arrest had not yet been judicially declared unconstitutional, there does not remain a jury issue as to whether this statute was used as a sham justification for the arrest.

### **Statute Involved**

The statute involved is Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, 42 U. S. C. §1983.

As printed in Title 42, the Section reads:

"Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured at law, suit in equity, or other proper proceeding for redress."



### **Proceedings Below**

Petitioners brought suit in the United States District Court for the Southern District of Mississippi, Jackson Division, against three policemen and one police justice of Jackson, Mississippi. The suit was for damages under (a) 28 U. S. C. §1343 alleging a cause of action under 42 U. S. C. §1983 and (b) 28 U. S. C. 1332 alleging diversity of citizenship and a cause of action for false arrest and imprisonment under Mississippi law. Judgment in favor of defendants-respondents were entered upon a jury verdict.

Upon appeal, the Fifth Circuit (1) reversed the judgment as to the policemen with respect to the federal cause of action under 42 U. S. C. §1983 but remanded with instructions that plaintiffs should not be permitted to recover if they knowingly went to a place where travelling as an integrated group would subject them to illegal arrest, (2) directed that the state law cause of action against the policemen should be dismissed and (3) held that the police justice was immune from suit under both causes of action and directed that the complaint against him should be dismissed.

### **Statement**

#### **A. Petitioners' Arrest and Confinement.**

Petitioners are three white and one Negro Episcopal clergymen. As members of a "Prayer Pilgrimage" they sought, in September 1961, to visit church institutions in both the South and the North, from New Orleans to Detroit, in order to deliver and dramatize their "message to the Church that the Church must become, in every phase of its life, that which by the grace of God it is—one Holy Fellow-

ship where racial barriers have been done away" (Defendants' Exhibit No. 1, R. 132).

On September 13 the clergymen arrived in Jackson, Mississippi, planning to take a Continental Trailways bus to Chattanooga, Tennessee.

At approximately 11:30 a.m., petitioners and eleven other Episcopal clergymen (nine white, two Negro) all dressed in clerical garb, arrived at the Jackson Trailways Bus Terminal in three taxis from Tougaloo College where they had spent the previous night. The bus to Chattanooga was scheduled to depart shortly after noon (R. 88-90, 180-181, 375-376, 463-464).

The ministers entered a waiting room, the entrance to which was marked "White Waiting Room Only—by Order of the Police Department" (R. 488-489, 270-277, 519-520). After entering the waiting room, they turned left to enter a restaurant. However, before more than four or five had passed through the restaurant doors, respondents Griffith and Nichols, Jackson police officers who had been waiting for the group to arrive,\* ordered the group to "hold it" or "come out" (R. 90-93, 182-185, 376-378, 464-465, 545-546).

The ministers then gathered in the waiting room, outside the restaurant, and were told by the police officers to "move along". When the ministers said that they only wanted to eat and asked why they could not do so they were not answered but again told to move on. When they did not, they were arrested (R. 95-96, 186-187, 379, 465).

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\* Petitioner Jones testified that as the ministers passed the two police officers standing in the waiting room doorway, he heard one of them say "shall we get them now or later" (R. 91).

Defendant Ray, a superior police officer, then arrived. He walked directly to the ministers, ordered them to move along and when they again did not do so but explained that they were hungry and wished to eat before their bus departed, he placed them under arrest, put them in a paddy wagon and sent them to jail (R. 99-100, 189-191, 370-382, 467-469).

Petitioners testified that (1) no one followed them into the station, (2) the waiting room was quiet and (3) no one in it threatened them by word or gesture (R. 93-98, 181, 186-192, 376, 378-380, 463, 466-469). That testimony was confirmed by Father Layton P. Zimmer, a fellow Episcopal priest who was in the station in nonclerical garb and who observed petitioners' arrest (R. 546-550).

The arresting officers conceded that the ministers were orderly and quiet (R. 506, 583, 598; opinion below, Appendix A, p. 2A). However, the policemen said that there was a "crowd" in the station in an "ugly" mood and that consequently they feared that the ministers might be attacked (R. 494-496, 575-578, 592-593, 603-612). But when pressed about the crowd and its ugly mood, Officer Griffith conceded that "I just noticed maybe two or three of them mumbling, kind of saw them jabbering a little to each other . . . off at a distance, something like that (R. 496, 612).<sup>\*</sup> Furthermore, there was no evidence whatsoever that any hostile persons were in the restaurant, which the police prevented the ministers, but no others, from entering.

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<sup>\*</sup> Similarly, Officer Nichols admitted that he did not mention an ugly mood when he telephoned the police station to obtain defendant Ray (R. 490).

The police conceded that they made no effort whatsoever to arrest the persons whom they claimed were in an ugly mood (or mumbling at a distance). Nor did they ask such persons to leave, or even say a word to them or caution or calm them in any way (R. 495, 584-585, 611-612). That the real aim of the police was to enforce segregation customs and laws is revealed by the police testimony (1) that it was wrong for whites and Negroes to be together in bus stations or anywhere (R. 485, 502); (2) that a Negro had never gone into that part of the station and not been arrested (R. 500); and (3) that "if [the ministers] did it again today" they would again arrest them (without any reference to a supposed ugly crowd) (R. 49).

#### **B. Petitioners' Conviction by Respondent Spencer.**

Two days after their arrest, petitioners were tried in the court of defendant Spencer, a police justice serving at the pleasure of the Mayor of Jackson (R. 272). Petitioners were tried upon a "General Affidavit" of defendant Ray which said that petitioners:

"...with intent to provoke a breach of the peace, did then and there willfully and unlawfully congregate with others in or around . . . a place of business engaged in selling or serving members of the public, and did then and there fail or refuse to disburse and move on as then ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi." (R. 110-111; 238-239; 390.)



Seven months after petitioners' convictions, the State sought and obtained leave to amend the affidavit in respect of the three white petitioners (Pierson, Morris and Jones) by (1) striking the words "with intent to provoke a breach of the peace, did then and there wilfully and unlawfully" and substituting "under such circumstances that a breach of the peace might be occasioned thereby, did then and there", (2) adding the words "wilfully and unlawfully" prior to the words "fail or refuse" and (3) substituting "disperse" for "disburse" (R. 117-119, 238-239, 390).

The affidavit in its original and its amended form was written in terms of Section 2087.5 of the Mississippi Code, which had been enacted in 1960. Section 2087.5 subsequently was declared unconstitutional by this Court (at the same time as it granted the petition for certiorari) in a case similar to petitioners' which also arose from Police Justice Spencer's court: *Thomas v. Mississippi*, 380 U. S. 564 (1965). Cf. *Edwards v. South Carolina*, 372 U. S. 229 (1963).

Defendant Spencer convicted petitioners of violating that statute and gave them the maximum sentence—four months in jail and a \$200 fine.

Defendant Spencer admitted there had been no evidence that petitioners were disorderly in any way (R. 511-512). He also admitted that he had never researched the law as to whether a person was ever entitled to decline to obey an improper order of a police officer and he assumed that one was never entitled to do so (R. 516).

Instead, at petitioners' trial, he read to them an article of religion from the Episcopal book of Common Prayer dealing with the duty of priests to obey civil authorities

and gave his opinion that petitioners were "guilty" of violating that article (R. 532-539).

Police Justice Spencer had tried all the cases (some 50 trials and 300 defendants) which had previously arisen out of the efforts of integrated groups to use the Jackson bus terminal (R. 517-518).

**C. The Subsequent Decision at a Trial De Novo That There Had Been No Evidence Against Petitioners.**

Petitioners' convictions were vacated after trials *de novo* in the County Court of Hinds County. Petitioner Jones was the first to be retried. After the City offered its evidence, Jones moved for a directed verdict of not guilty; the County Judge granted the motion and adjudged him not guilty (R. 481-482). The County Court then granted the prosecutor's motion to *nol. pross.* the cases against the two other petitioners on the grounds that the evidence against them was the same as the evidence against Jones (R. 234-235, 245, 396).

**D. The Trial and Appeal of This Action.**

The jury found for respondents after the trial court had permitted petitioners to be examined about the following matters:

1. Whether they agreed with the Communist Party's demands dealing with race relations as set out in quotations from the *Daily Worker* of May 26, 1928 (R. 155-165);

2. Whether they believed in the abolition of all laws prohibiting intermarriage of persons of the Caucasian and the Negro races (R. 415-417, 160);

3. Whether they supported the "Freedom Ride Invasion" of Jackson (R. 214-219) and whether they supported the purposes and activities of those groups that call themselves Freedom Riders (R. 142-149, 225-253, 260-261, 268, 357, 405, 407, 409, 412-412);

4. Whether their attorneys in Police Justice Spencer's court had previously represented many Freedom Riders (R. 416);

5. Whether their trial counsel was the general counsel for the Congress of Racial Equality (CORE) (R. 419, 229-230, 317); and

6. Whether petitioner Pierson had suggested any corrections in a magazine article that had referred to a New York newspaper headline stating "Arrest Son-in-Law of Governor Rockefeller as 'Freedom Rider' " (R. 425-426).

In addition, the trial court permitted nine letters written by Petitioner Morris to prospective and actual members of the Prayer Pilgrimage to be introduced and extensively used in cross-examination concerning the aims of the Prayer Pilgrimage and the beliefs of Father Morris (R. 249-270, 278-362).

On the basis of the letters, the defense contended (1) that the ministers knew that travelling as an integrated group might subject them to arrest and jailing and (2) that the ministers prepared for the possibility that some of their members would be arrested and jailed.

On appeal, the Fifth Circuit Court of Appeals held the following:

**A. *Policemen Defendants:***

1. The judgment in their favor in the civil rights cause of action, 42 U. S. C. §1943, should be reversed because the trial court permitted questions dealing with (1) their views on race as compared with the *Daily Worker's* and (2) the Freedom Riders, with whom, said the court, no connection was shown.

2. Petitioners would be entitled to a directed verdict on the issue of liability in the civil rights cause of action because their arrests were improper *but* the case should be remanded for a hearing on the merits because proof that petitioners planned to go to places where their orderly traveling as an integrated group might subject them to arrest would preclude recovery.

3. Without regard to the reasons for which they made the arrests or the circumstances existing at the time of the arrests, the policemen were immune from liability under the diversity cause of action for false arrest because the statute under which they purported to arrest petitioners had not yet been held unconstitutional.

**B. *Police Justice Spencer*** was immune from liability under both causes of action on the ground that he was a judicial officer and the complaint against him should therefore be dismissed.



## REASONS FOR GRANTING THE WRIT

### I.

**CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING THAT A POLICE JUSTICE WHO ACTS UNDER COLOR OF STATE LAW OR CUSTOM KNOWINGLY TO DEPRIVE PERSONS OF RIGHTS SECURED BY THE CONSTITUTION AND LAWS OF THE UNITED STATES IS IMMUNE FROM LIABILITY UNDER A STATUTE THAT APPLIES, WITHOUT EXCEPTION, TO "EVERY" PERSON, THAT WAS SAID BY THE CONGRESS THAT ENACTED IT TO APPLY TO JUDGES AND THAT WAS INTENDED TO CREATE A REMEDY FOR SHAM JUSTICE IN THE COURTS.**

A. It is apparent from legislative history of 42 U. S. C. §1983, 17 Stat. 13, Section 1 of the Civil Rights Act of 1871, that Congress intended state court judges to be liable in damages if they acted under color of state law or custom knowingly to deprive a person of rights, privileges or immunities secured by the Constitution of the United States. This is not to say that a mere error of judgment or non-willful abuse of discretion would be actionable. Rather, a willful and knowing "deprivation of any rights, privileges or immunities" is the basis of remedial action.

The statute provided for no exceptions. It made "any" person who so deprives "any" person liable in damages.\*

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\* As altered by the revisor who prepared the Revised Statutes of 1878, the statute refers to "every" person who deprives "any" person of his rights. "Every" is just as inclusive as "any", but as originally enacted the parallelism of "any" in describing culprit and victim makes it even clearer that Congress did not intend to sub silentio immunity to judges.

The revisor removed other language that textually made it clearer that no immunity was intended. As enacted, the section stated that any person shall be liable for depriving persons of their constitutional rights, etc., under color of state law, custom, etc., "*any such law, statute, ordinance, regulation, custom or usage to the contrary notwithstanding*". (Emphasis supplied to the words that were removed.)

The revisor lacked authority to alter the law substantively. See Revised Statutes of the United States, 1878, Preface, p. 4; Appendix, pp. 1092-1093; 19 Stat. 268, ch. 82 §4 as amended by 20 Stat. 27, ch. 26. Title 42 has not been enacted into positive law.

All the members of Congress who spoke on the problem explicitly stated that the section applied to judges. None disagreed. See *Congressional Globe*, 42d Cong., 1st Sess., 1871: Congressman Arthur, 3/31/71, p. 365, col. 3—p. 366, col. 1; Congressman Sheldon, 3/31/71, p. 368, col. 1; Congressman Lowe, 3/31/71, p. 376, col. 1; Congressman Lewis, 4/1/71, p. 385, col. 1. Cf. Senator Thurman, 4/13/71, p. 217, col. 1 (Appendix).

Congress was concerned not with protecting good men against having to face charges of wrongdoing but rather with defiance of law by mobs and officials including judges. Congress was concerned that "immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress."\* It was shocked at the record of many judges.\*\* It was, indeed, the breakdown of justice that gave rise to the need for legislation.

If it be said that it is harsh or unwise to subject the state judiciary to suits alleging that they knowingly acted

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\* Congressman Lowe, 3/31/71, p. 374, col. 3.

\*\* See for example: Senator Sherman (summing up conference report) "Spreading terror and violence . . . now exist unchecked by punishment, independent of law, uncontrolled by magistrates." 4/19/71, p. 820, col. 2.

Congressman Rainey: "The courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity." 4/1/71, p. 394, col. 3.

Congressman Bentley: The remedy is needed because of "prejudiced juries and bribed judges": 4/3/71, p. 429, col. 2.

Senator Osborn: "These men with hands stained with blood, hostile to every man who stood by his country during the war, determined by fair means or by foul, that loyal men shall not remain in power, ought not to sit upon juries and administer the laws enacted to punish their own crimes." 4/13/71, p. 654, col. 2.

to deprive a man of his civil rights, the simple answer is that Congress in 1871 intended harsh remedies to check bloody terror, stubborn defiance and abuse of legal process. A bloody civil war had been fought. Congress had ousted state governments altogether and put in military governments. And then after terror against and injustice to the newly freed blackmen and the loyalists spread, Congress enacted the Civil Rights Act of 1871. Other sections of that Act were potentially far harsher than applying Section 1 to judges. See, *e.g.*, Sections 3, 4 and 6.

The legislative history of Section 2 of the Civil Rights Act of 1866, 14 Stat. 27, also supports the conclusion that the 1871 Congress intended to cover the state judiciary. It does so because (1) the similar terms of the earlier Act were specifically referred to as a guide to the 1871 Act by its principal sponsor, Congressman Shellabarger, when he introduced the 1871 Act, *Cong. Globe*, 42d Cong., 1st Sess. 1871, 3/28/71, p. 319, col. 3, printed in Appendix, p. 68, col. 1 and (2) the temper of the earlier Congress casts light upon that of the later Congress. President Andrew Johnson vetoed the 1866 Act after it was first passed on the ground, among others, that it subjected state judges to criminal liability for depriving persons of their civil rights. *Cong. Globe*, 39th Cong., 1st Sess., 3/27/66, pp. 1679, 1680, col. 2. Congress re-enacted the Act over the President's veto and in so doing specifically stated that it was intended that judges who knowingly used their office to deprive persons of their civil rights should be punished.\*

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\* See Senator Trumbull, Chairman of the Committee on the Judiciary, who led the effort to overrule the veto, at *id.*, 4/4/66, pp. 1758-59, *passim* and in particular:

(continued on page 15)

B. The decision below conflicts with the decision of the Third Circuit in *Picking v. Pa. R. Co.*, 151 F. 2d 240 (3d Cir. 1945). Cf. *McShane v. Moldovan*, 172 F. 2d 1016 (6th Cir. 1949). *Picking* is the only decision dealing with the question of judicial immunity under Section 1983 to consider any part of the legislative material referred to above. See 151 F. 2d at 251, n. 12.\*

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(continued from page 14)

"But it is said that under this provision judges of the courts and ministerial officers who are engaged in the execution of any such statutes may be punished. . . . I admit that a ministerial official or a judge, if he acts corruptly or viciously or under color of an illegal act may be and ought to be punished. . . ."

"The assumption that State judges and other officials are not to be held responsible for violations of United States laws, when done under color of State statutes or customs, is akin to the maxim of the English law that the King can do no wrong. It places officials above the law. It is the very doctrine out of which the rebellion was hatched."

See also Senator Johnson, *id.*, 4/5/66, p. 1778, col. 1; Senator Cowan, 4/5/66, p. 1783.

Congressman Lawrence, the only speaker on the subject in the House, said:

" . . . it is better to invade the judicial power of the State than permit it to invade, strike down, and destroy civil rights of citizens. . . ." *Id.*, 4/7/66, p. 1837, col. 1.

\* After this Court's decision in *Tenney v. Brandhove*, 341 U. S. 367 (1951), holding that state legislators were immune from liability under (the predecessor of) Section 1983, the Third Circuit has queried whether it would still reach the result of *Picking*. See *Ginsberg v. Stern*, 251 F. 2d 49 (3d Cir. 1958); *Ginsberg v. Stern*, 225 F. 2d 245 (3d Cir. 1955). For cases relying upon *Tenney* to hold that judges were immune, see *Kenney v. Fox*, 232 F. 2d 288 (6th Cir. 1956); *Tate v. Arnold*, 223 F. 2d 782 (8th Cir. 1955); *Cauley v. Warren*, 216 F. 2d 74 (7th Cir. 1950); *Francis v. Crafts*, 203 F. 2d 809 (1st Cir.), *cert. denied*, 346 U. S. 835 (1953).



C. This Court's decision in *Tenney v. Brandhove*, 341 U. S. 367 (1951), has been misapplied by several circuit courts of appeals (whose decisions are cited in the preceding footnote) to support the ruling that judges are immune from suit under 42 U. S. C. §1983.

Congress intended to cover judges but it did not intend to cover legislators. The statute on its face covers those who act under color of law, not those who enact laws.\* The principal problem in 1871 was not with legislation but with sham justice.

## II.

**CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING THAT POLICEMEN ARE NOT LIABLE IN DAMAGES FOR DEPRIVING PERSONS OF THEIR CONSTITUTIONAL RIGHTS IF THE PERSONS SO DEPRIVED KNOW THAT THE POLICEMEN MIGHT DISREGARD THEIR CONSTITUTIONAL RIGHTS BUT NEVERTHELESS CHOSE TO EXERCISE THOSE RIGHTS.**

A. Under the decision below, the damage remedy of 42 U. S. C. §1983 is unavailable to anyone who chooses to exercise his constitutional rights knowing that exercise of those rights may subject him to illegal treatment by the police.

The evidence "against" petitioners shows nothing more than that by way of a "plan and purpose" to be arrested,

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\* See that distinction made explicit during the debate on the analogous provisions of Section 2 of the Civil Rights Act of 1866. *Cong. Globe*, 39th Cong., 1st Sess., 4/5/66, p. 1758, col. 1 (Senator Trumbull). The United States Constitution itself mentions a legislative immunity, but no judicial immunity. Article I, Section 6.

petitioners *did* nothing to initiate arrest other than to enter the bus terminal as an integrated group. Their orderly conduct has not been disputed. To say that persons who engage in constitutionally protected conduct and are therefore arrested through the unconstitutional application of a statute, subsequently declared unconstitutional on its face, are evincing a "plan and purpose" to be arrested that frees the policemen who arrested them from liability is absurd.

If, as the Court below found, the arrests were improper under 42 U. S. C. §1983, surely the police who made the improper arrests should not be immune from responsibility because they happened to arrest persons who intentionally challenged the segregation customs of Mississippi. Quite the contrary. Surely those who act to implement the Constitution—or to dramatize the fact that it is being ignored—are not thereby deprived of the benefit of laws designed to implement the Constitution.

B. The decision below does not, of course, concern petitioners alone. A civil remedy for damages is a device to substitute law for force. To say that those who are at the forefront of the civil rights movement are to be denied the right to obtain damages for deprivation of their civil rights removes one more safety valve from a situation where the rule of law is already endangered. Similarly, to tell policemen that they are free from future personal responsibility for illegally arresting those who knowingly challenge segregation or those who seek to focus attention upon injustice scarcely makes more likely the voluntary observation of the Constitution.

C. Although the decision of the Court below that is under discussion in this section is not technically a final judgment, the impact of that decision upon this case and upon civil rights supporters and policemen generally makes it appropriate that this Court grant certiorari to review this decision as well as the final judgments discussed in the other sections of this petition.

This Court has jurisdiction under 28 U. S. C. §1254(1) to review non-final decisions. See *Larsen v. Domestic & Foreign Commerce Corp.*, 337 U. S. 682, 685, n. 3 (1949); *Land v. Dollar*, 330 U. S. 731, 734, n. 2 (1947); *United States v. General Motors Corp.*, 323 U. S. 373, 377 (1944).

The decision below is fundamental to the future conduct of this case. It is fundamental to the future conduct of policemen. It is fundamental to the present and past rights of scores of others who sought to exercise their constitutional rights in the face of official opposition. It should be reviewed by this Court now.

### III.

#### **CERTIORARI SHOULD BE GRANTED TO REVIEW THE HOLDING THAT POLICEMEN ARE NOT LIABLE FOR MAKING ARRESTS WHEN THEY USE A STATUTE THAT SUBSEQUENTLY IS DECLARED UNCONSTITUTIONAL ON ITS FACE AS A SHAM BASIS FOR THE ARREST.**

Assuming that the court below was correct in deciding that it is the law in Mississippi (contrary to most jurisdictions) that a police officer is not liable for false arrest when he makes an arrest in reliance upon a statute that is subsequently held unconstitutional, it was nevertheless im-

proper to hold that the state law cause of action against the policeman should be dismissed. There remains a jury question as to whether the arrest was really in reliance upon the statute or whether the police really arrested petitioners because they were an integrated group and used the "breach of the peace statute" as a sham justification for the arrest. In other words, even though the statute had not yet been declared unconstitutional on its face, there remains the issue whether it was knowingly applied unconstitutionally. See *Nesmith v. Alford*, 318 F. 2d 110 (5th Cir. 1963).

Petitioner's proof was that there were no threats from others in the waiting room of the bus station. The police testimony itself indicated their aim to preserve racial separation and was weak and conflicting on the issue of whether there was in fact an "ugly" crowd in the waiting room. In any event, the police admitted that they made no effort whatsoever to calm others in the waiting room. And there was no evidence that there was any danger of a breach of the peace in the restaurant which the police prevented the ministers from entering though they could have kept out those who supposedly were hostile to the ministers.

The Mississippi Supreme Court decision in *Golden v. Thompson*, 194 Miss. 241, 11 So. 2d 906 (1943), cited by the court below to support its decision that the state law cause of action against the police officer should not be retried in fact requires that the police at least act in "good faith in reliance" on the statute that subsequently is declared invalid. It is for a jury to decide whether the police acted in good faith. See e.g., *Miller v. Stimmitt*, 257 F. 2d 910 (10th Cir. 1958).



Here again a narrow interpretation, this time of state law, can have widespread effects upon many persons other than the minister and the policemen involved herein.

### CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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STEPHEN M. NAGLER,

February 21, 1966.

IN THE  
**United States Court of Appeals**  
**For the Fifth Circuit**

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No. 21325

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ROBERT L. PIERSON, *et al.*,

Appellants,

versus

J. L. RAY, *et al.*,

Appellees.

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*Appeal from the United States District Court for the  
Southern District of Mississippi.*

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(October 25, 1965.)

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Before JONES and BELL, Circuit Judges, and HUNTER,  
District Judge.

JONES, Circuit Judge: The appellants brought an action against the appellees alleging a common-law tort claim for false imprisonment and a statutory<sup>1</sup> claim for damages for a deprivation of civil rights. The appellants were clergymen. One of them is a Negro. The appellees Ray, Griffith and Nichols were police officers of the City of Jackson, Mississippi. The appellee Spencer was the Police Justice and Ex-Officio Justice of the Peace, Hinds County, Mississippi.

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<sup>1</sup> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. 42 U. S. C. A. §1983.

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Fifteen clergymen in clerical attire, including the appellants, were participants in a so-called prayer pilgrimage. Most of the twenty-six who were accepted for the pilgrimage resided in Northern states. The pilgrimage was to start at New Orleans and go on to Dearborn, Michigan. A bus was chartered from New Orleans to Jackson, but not beyond. At Jackson the fifteen clergymen went by taxicab to the Continental Bus Terminal. They had bus tickets for transportation to Chattanooga, Tennessee. They arrived at the bus terminal in Jackson about 11:20 o'clock in the forenoon of September 13, 1961. The Chattanooga bus was scheduled to depart shortly after noon.

The prayer pilgrimage had been well publicized in advance. The appellees Griffith and Nichols had been sent to the bus station. Upon or soon after their arrival the fifteen clergymen started toward the coffee shop. They were stopped by the two officers and remained in the passageway leading to the coffee shop. The officers directed or ordered them to "move on." The clergy stayed at the place where they were halted. One of the officers telephoned the police station and soon after the appellee Ray arrived. He was then a captain of police. At the time of the trial of the cause in the district court he was deputy chief of police. When the group arrived there were fifteen to twenty people in the bus station. Twenty-five to thirty people, all of whom were white, followed them in. There was testimony that the people in the station were "mumbling in a very ugly mood," that they were "disturbed," that they were "in a turmoil," and that quite a disturbance was caused. The group of prayer pilgrims were completely orderly. Captain Ray told the clergy to "move along" and upon their failure and refusal to do so, they were arrested and taken to jail. An affidavit was filed by Captain Ray charging them with disorderly

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conduct under a Mississippi statute.<sup>2</sup> The appellants were tried on September 15, 1961, before the appellee, Judge Spencer, and found guilty. Each of the appellants was sentenced to four months in jail and fined two hundred dollars. Appellants Breeden, Morris, and Pierson were released on bond on September 19, and the appellant Jones was released on bond on September 29, 1965. Bond was available to all of the appellants and it was by their choice that they remained in jail rather than being sooner released on bond. The appellants took an appeal to the County Court of the First Judicial Court of Hinds County, where the appeal was by way of a de novo trial. The case of the appellant Jones was first heard by the County Judge, who found him not guilty. The prosecution then moved that the charges against the other appellants be nolle prosequied, and the motion was granted. The appellants brought this action, each claiming \$11,001 damages. The cause was tried before a jury which returned a verdict

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<sup>2</sup> 1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others in . . . any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, . . . or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building; or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person. . . . shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars (\$200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment; . . . Miss. Code 1942 Recompiled §2087.5.



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for the appellees. A judgment was entered on the verdict from which this appeal has been taken.

In a pre-trial deposition of the appellee Spencer, he was asked whether a citizen has a right to disobey an unreasonable or improper order of a police officer, as in a case in which it was clear that the order of the policeman to move on was improper. He was asked to answer the question as a judge. His answer was that he thought the citizen should obey the officer and later seek redress. The appellants were not permitted to question the appellee Spencer as to this opinion when he was called as an adverse witness at the trial. The appellants contend that the ruling was erroneous. The refusal of the district court to permit the question was not error. Both at the taking of the deposition and at the trial the questions were propounded to the witness in his capacity as a judge. Whether or not a judicial opinion is erroneous is not a question to be resolved by a jury. A judge's function is to decide cases, but not to answer academic or hypothetical questions.

The appellee Spencer filed a motion to dismiss the complaint as to him on the ground that his actions were judicial and he was immune from any civil liability. The motion was deferred for decision until the trial of the case on the merits. No ruling on the motion was made. The judgment for the appellants made the question unimportant, but we think it is appropriate to say that the motion should have been granted. By the leading case of *Bradley v. Fisher*, 13 Wall. 335, 20 L. Ed. 646, the immunity was established of judges of courts of superior or general jurisdiction from liability for damages growing out of the performance of their judicial duties. The doctrine has been extended to the judges of all courts. *Barr v. Matteo*, 360 U. S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434; *Yaselli v. Goff*, 2nd Cir. 1926, 12 F. 2d 396, aff. 275

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U. S. 503, 48 S. Ct. 155, 72 L. Ed. 395. The rule applies to city magistrates and municipal judges. *Cuiksa v. City of Mansfield*, 6th Cir. 1957, 250 F. 2d 700, cert. den. 356 U. S. 937, 78 S. Ct. 779, 2 L. Ed. 2d 813; *Reilly v. United States Fidelity & Guaranty Co.*, 9th Cir. 1926, 15 F. 2d 314; 35 C. J. S. 707, False Imprisonment §44. Such is the law in Mississippi. *Bell v. McKinney*, 63 Miss. 187. The judicial immunity applies in civil rights actions as well as at common law. *Norton v. McShane*, 5th Cir. 1964, 332 F. 2d 855, cert. den. 380 U. S. 981, . . . S. Ct. . . ., 14 L. Ed. 2d 274. If a judicial officer acts in the clear absence of all jurisdiction and authority he incurs liability for a false imprisonment caused by him. 35 C. J. S. 707, False Imprisonment §44. The Mississippi statute, Sec. 2087.5, on its face, was sufficient to justify the action taken by Judge Spencer. The statute had not then been held invalid. It was subsequently upheld by the Supreme Court of Mississippi in *Thomas v. State*, 160 So. 2d 657, *Farmer v. State*, 161 So. 2d 159, and *Knight v. State*, 161 So. 2d 521. We think it cannot be said that there was a clear absence of jurisdiction in the appellee Spencer at the time action was taken by him although, since this cause was argued before us, the statute was held invalid as applied to circumstances such as those in this case. *Thomas v. Mississippi*, 380 U. S. 524, 85 S. Ct. 1327, 14 L. Ed. 2d 265. See *Boynton v. Virginia*, 364 U. S. 454, 81 S. Ct. 182, 5 L. Ed. 2d 206. A judge should not be put to a correct determination of the validity of a criminal statute at the hazard of being cast in damages for the making of a wrong guess. We think it was proper to defer a ruling on the motion of the appellant Spencer but it should have been granted when the evidence was in.

The doctrine of immunity which has long prevailed with respect to judicial officers, has been extended to other officers of government whose duties are related to the judicial process. *Barr v. Matteo*, 360 U. S. 564, 79 S. Ct.

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1335, 3 L. Ed. 2d 1434, *Norton v. McShane*, 5th Cir. 1964, 332 F. 2d 855, cert. den. 380 U. S. 981, . . . S. Ct. . . , 14 L. Ed. 2d 274,<sup>3</sup> *Gregoire v. Biddle*, 2nd Cir. 1949, 177 F. 2d 579, cert. den. 339 U. S. 949, 70 S. Ct. 803, 94 L. Ed. 1363. In this cause, as in *Norton v. McShane*, *supra*, the doctrine of official immunity protects the police officers from common-law false-imprisonment liability. The rule may be otherwise where a claim is asserted under a Civil Rights Act. In *Norton v. McShane*,<sup>4</sup> *supra*, it was said:

“While it is clear that the common-law immunity afforded legislative and judicial officers applies in suits under the Civil Rights Acts, there remains much uncertainty as to the extent to which immunity for subordinate executive officials applies, if it applies at all.” 332 F. 2d 855, 860-861.

The uncertainty then existing still prevails. 15 Am. Jur. 2d 452 et seq., Civil Rights §67. It might seem to be an anomaly of the law that in the case of a Federal police officer acting in Mississippi, an extremely aggravated wrong must remain unredressed because of public policy, as was held in *Norton v. McShane*, *supra*; while in the case before us, municipal police officers, acting in Mississippi, may be required to answer in damages for acting in good faith under a state statute which they were entitled to presume to be valid. Yet such appears to be the law which controls our decision on this issue in this appeal.

By dictum in *Hoffman v. Halden*, 9th Cir. 1959, 268 F. 2d 280, it was indicated that by the Civil Rights Act liability was imposed on state officers for acts within as

<sup>3</sup> In *Norton v. McShane* a claim was asserted against Federal marshals. For Erie-Tompkins purposes it was a Mississippi case.

<sup>4</sup> It may be noted that *Norton v. McShane* was decided more than a year after *Nesmith v. Alford*. The writer of the *Norton* opinion was one of the judges of the panel that decided *Nesmith*.

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well as without the scope of their authority if done under color of law. In *Monroe v. Pape*, 365 U. S. 167, 81 S. Ct. 473, 5 L. Ed. 2d 492, it was held that under 42 U. S. C. A. §1983 a cause of action may be asserted against a state police officer acting under color of state law for deprivation of a Fourteenth Amendment Constitutional right whether or not done wilfully. See *Cohen v. Norris*, 9th Cir. 1962, 300 F. 2d. Cf. *Davis v. Turner*, 5th Cir. 1952, 197 F. 2d 847. Inherent in the *Monroe* holding is the principle that good faith and reliance upon a state statute subsequently declared invalid are not available as defenses. *Monroe v. Pape* did not expressly rule upon the question of immunity but the result necessarily implies rejection of such a defense as a general proposition. *Cohen v. Norris, supra*. The defense of immunity is not available to the police officer appellees in this cause.

While one of the appellants was on the stand as a witness for himself and the other appellants, he was shown a copy of the *Daily Worker*, setting out nine demands of the Communist party with respect to racial discrimination, and asked if he agreed with the demands. The witness was required to answer over objection. His answer was, as to all but one, that he agreed and as to it he was undecided. The appellants then moved for a mistrial. The motion was denied. The interrogation of the witness as to his beliefs regarding racial segregation and the like seem wholly irrelevant to any of the issues of the case. It might be urged with plausibility that the error in permitting the questions to be asked and requiring them to be answered was not prejudicial. We cannot agree. The permitting of the use of the Communist party organ, the *Daily Worker*, as the source of the inquiries could not be other than prejudicial error.

The trial court permitted one of the appellants and their witnesses to be questioned regarding racial strife in the City of Jackson occurring in connection with the visitation of Freedom Riders, so called, some time prior to the epi-



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sode from which this action arose. Appropriate objections were made and overruled. No connection was shown between the Freedom Riders and the Prayer Pilgrims, and the appellants denied any connection. It was not shown that the earlier incidents were sufficiently close in point of time to have any relation to the situation with which we are dealing. It was error not to have sustained the objections.

The appellants here complain of a charge<sup>5</sup> given by the district court with respect to the Mississippi statute. No

<sup>5</sup> The law of Mississippi is this—and I instruct you that Section 2087.5 of the Mississippi Code of 1942 Recompiled and as amended provides that whoever congregates with others in a public place or in any place of business engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby and who fail or refuse to disburse and move on when ordered so to do by any law enforcement officer of any municipality shall be guilty of a misdemeanor; and if you believe from the preponderance of the evidence in this case that on September 13, 1961, the plaintiffs congregated with others at the Trailways bus station in Jackson, Mississippi, under such circumstances that a breach of the peace may have been occasioned thereby, and that the plaintiffs failed or refused to disburse or to move on when ordered so to do by the police officers of the City of Jackson, Mississippi, then it would be your duty to return a verdict for the defendants in the case.

That is, you might say, the crux of the law, but, of course, everything I say to you is a part of the law, and all of the instructions will be taken together; but if a bunch of folks congregate with others engaged in serving members of the public under circumstances such that a breach of the peace may be occasioned thereby, and fail or refuse to disburse when ordered so to do by a law enforcement officer, he is guilty of a misdemeanor, and the officers under those circumstances would have the right to arrest him.

It is not contemplated by that law that any violence would be done to any particular person, but if a bunch of people gather at a public place under such circumstances as then existed that a breach of the peace may occur unless the officers have a right to tell them to move on, and if they refuse to do so, then, of course, they would be guilty of the crime, and the officers would have the right to arrest them.

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specific objection was made to the charge nor grounds of objection assigned.<sup>6</sup> It may be observed, in connection with the instruction, that at the time of the trial the Mississippi statute, Section 2087.5, had not been held invalid. The instruction, in the form given, would not now be proper.

The appellants complain of the trial court's instruction<sup>7</sup> on probable cause, and an objection to it was made and preserved. If the trial court had been correct in its assumption that Section 2087.5 was a valid statute defining a misdemeanor, then the instruction would have been proper. A police officer is permitted to arrest, without a warrant, for misdemeanors committed in his presence. Is he to be required in order to be free from liability for damages, to have his action vindicated by a judgment of conviction, an affirmance on appeal, and a Supreme Court determination of the validity of the statute under which he has acted? The authorities are not uniform as to whether a public officer can be held civilly liable for acting under the authority of a statute subsequently held invalid. *Miller v. Stinnett*, 10th Cir. 1958, 257 F. 2d 910. The rule followed in Mississippi, which may be the minority rule but which is controlling here, is that a public officer is not charged with the duty of determining at his peril whether a statute is valid when he is acting under it. *Golden v. Thompson*, 194 Miss. 241, 11 So. 2d 206.

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<sup>6</sup> A general objection, which counsel attempted to interpose because of his fear that his memory had failed him, is unavailing. Fed. Rules Civ. Proc. 51, 28 U. S. C. A.

<sup>7</sup> I further instruct you that if you find from a preponderance of the evidence in this case that at the time of the arrest of the plaintiffs by the defendants Ray, Griffith and Nichols said defendants had probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested, it is your duty to return a verdict for the defendants.

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Thus the challenged instruction was not improper when given although if it should be requested now, since the statute has been declared invalid, it would be couched in different terms; although the conduct of the appellees would be tested by the situation existing at the time of their action.

The appellant Morris was the executive director of the society which organized and supervised the prayer pilgrimage. The court admitted in evidence, over timely objections, his letters and memoranda used in organizing and planning the pilgrimage. From these exhibits and from the testimony of the appellant Morris it could have been inferred that one of the purposes, perhaps the prime purpose, of the pilgrimage was to have at least ten of the group jailed in Jackson. The length of time for remaining in jail was discussed. Arrangements in advance for bail bonds and for counsel had been made, or so it could have been found. In one of the communications it was said:

“All in all, I think you can count on becoming familiar with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for us when he said, ‘About jail—Here I am, send me. I’m not brave but I’m obedient.’ ”

The evidence would have permitted a finding, not only that being jailed in Jackson was a possibility, but that the participants would go to Jackson for the purpose of procuring their jailing and would so conduct themselves as to insure the achievement of that result. We do not say that this evidence required such a finding; we say that it permitted it. If the appellants’ claims can be defeated by a showing of a plan and purpose of being arrested and jailed, then the evidence was properly admitted. We think that such a showing would preclude recovery and the ques-

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tion is presented by the appellants' specification of error next considered.

The remaining assignment of error is the denial by the trial court of the appellants' motion for a directed verdict on the issue of liability, leaving only the question of damages to the jury. In urging this point, the appellants rely upon *Nesmith v. Alford*, 5th Cir. 1963, 318 F. 2d 110, cert. den. 375 U. S. 975, 84 S. Ct. 489, 11 L. Ed. 2d 420. In *Nesmith* the plaintiffs had been arrested and placed in jail. They sued police officers for malicious persecution, false imprisonment, and deprivation of civil rights. This court held that the plaintiffs, Nesmith and his wife, were entitled to a directed verdict as a matter of law as to liability on the common-law claim for false imprisonment and, as we read the court's opinion, on the civil rights claim. The false-imprisonment common-law claim is a state cause of action. The *Nesmith* case was decided under the law of Alabama. This case arises under the law of Mississippi. It is our considered view that under the law of Mississippi the appellants were not entitled to a directed verdict of liability on the false-imprisonment claim. As we have pointed out, there was evidence from which it might have been found that the appellants went to Jackson, not only contemplating the possibility of being jailed, but with a design and plan that they should be. If they had such a design and plan, are they entitled to recover damages for having accomplished their objective?

The question is not whether the appellants could lawfully dramatize their protests against racial inequality by attempting to eat in a wrongfully segregated lunch room in a bus terminal of an interstate passenger carrier. It goes without saying that they might do so. Rather the question is whether, in so doing, can they include in their program a planned arrest and confinement and the successfully rely upon such confinement as the basis for re-



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covery in an action for damages for false imprisonment. Throughout the common law of torts the maxim, *volenti non fit injuria*, is applicable. It is applicable to false imprisonment. 35 C. J. S. 712, False Imprisonment §46 c. One who has invited or consented to arrest and imprisonment should be denied recovery. *Hulberstadt v. Nelson*, 34 Misc. 2d 472, 226 N. Y. S. 2d 100; *Greene v. Fankhauser*, 137 App. Div. 124, 121 N. Y. S. 1004; *Stork v. Evert*, 47 Ohio App. 256, 191 N. E. 794. The principles set forth in the recent case of *State v. Moore*, . . . Miss. . . ., 174 So. 2d 352, show a recognition of the rule as applicable in Mississippi, although under a factual situation different from the case before us. An earlier decision, and one more nearly in point on its facts, is *Williamson v. Wilcox*, 63 Miss. 335, where it was said, "For a purely private injury one cannot maintain a suit when he has consented to the act which produced the injury." Whatever the law may be in some jurisdictions,<sup>8</sup> we conclude that, under the law of Mississippi, to which we look for the governing common-law rules of law,<sup>9</sup> proof that the plaintiffs invited or consented to arrest and confinement precludes recovery for false imprisonment. Since, as is said in *Monroe v. Pape*, *supra*, "Section 1979 [42 U. S. C. A. §1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." We think the tort principle of *volenti non fit injuria* applies to the claim asserted for a civil rights violation under 42 U. S. C. A. §1983 as well as to

<sup>8</sup> As in Alabama. See *Nesmith v. Alford*, 5th Cir. 1963, 318 F. 2d 110.

<sup>9</sup> Questions as to liability under Civil Rights Acts are Federal questions to be determined by Federal Law. *Nesmith v. Alford*, *supra*, n. 8; 15 Am. Jur. 2d 453, Civil Rights §67.

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the common-law cause of action. For reasons elsewhere discussed in this opinion, we hold that the appellees are immune from liability for false imprisonment at common law but not from liability for violations of the Federal statutes on civil rights. It therefore follows that there should be a new trial of the civil rights claim against the appellee police officers so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment.

The judgment of the district court will be reversed and remanded so that the complaint and the action may be dismissed as to the appellee Spencer, and a new trial had as to the other appellees in accordance with this opinion.

**REVERSED AND REMANDED.**

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IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1965

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No.

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ROBERT L. PIERSON, ET AL., *Petitioners,*

*vs.*

J. L. RAY, ET AL., *Respondents.*

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**RESPONDENTS' OPPOSITION TO PETITION FOR  
WRIT OF CERTIORARI AND ALTERNATIVE  
CROSS-PETITION.**

Respondents Ray, Griffith and Nichols, all policemen of the City of Jackson, Mississippi, and Respondent Spencer, Municipal Justice of said City, oppose the issuance of a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit on the grounds that:

- (1) No reasons for granting the writ of the character specified in Rule 19 of this Court are submitted.
- (2) The judgment of the Court of Appeals is not a final judgment but is a judgment reversing a jury verdict for Respondents and remanding the case for a new trial as to Respondents who are police officers. While this Court has jurisdiction to issue the writ, the petition does not involve a substantial issue fundamental to the further conduct of this case.

But, if mistaken in this, and if certiorari is to be granted, then Respondents who are police officers of the City of Jackson make this a Cross-Petition for Certiorari so that if the writ issues and this Court reviews the judgment of the Circuit Court of Appeals for the Fifth Circuit, this Court will review the apparent holding of that Court that:

Respondents who are police officers sued for damages under 42 U.S.C., Section 1983, cannot defend on other and additional grounds beyond the ground that Petitioners invited or consented to the arrest and imprisonment, i.e., that Respondents can defend on the ground of good faith in enforcing the State Statute on probable cause and the ground that Respondents did not make the arrests because Petitioners were an integrated group or use the statute as a sham justification for the arrest or knowingly apply an unconstitutional statute or apply it unconstitutionally.

In support of said alternative Cross-Petition the Respondents adopt all of the allegations of Petitioners as to the jurisdiction of this Court, the statute involved, the actual proceedings of the Court below, the copy of the opinion thereto attached as Appendix A and the reference to the official report thereof.

#### **Petitioners Rely on Insufficient Reasons for Granting the Writ**

Petitioners here assign no grounds for or reasons for granting the Writ of Certiorari of the character that this Court considers special, important and sufficient, i.e., the decision of the Court of Appeals of the Fifth Circuit is not in conflict with the decision of other Courts of Appeal on the same matter. In so far as the holdings relied on by Petitioners to justify review are concerned: The Court of



Appeals of the Fifth Circuit has not decided an important state question in conflict with the applicable state law; has not decided an important question of federal law which has not been but should be settled by this Court; has not decided a federal question in a way in conflict with the applicable decisions of this Court; and has not so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

- I. *Certiorari should not be granted to review the holding of the Court of Appeals that a police justice is immune from liability for damages under 42 U.S.C. 1983 for error of judgment or error in the determination of the validity of or applicability of a criminal statute.*<sup>1</sup>

Admittedly here the police court of the City had jurisdiction and there was no denial of due process by the judge. After arrest the Petitioners were regularly processed. Affidavits were filed in the City Police Court by the Chief of Police of the City of Jackson to the effect that Petitioners had congregated with others in or around the Continental Bus Terminal "... a place of business engaged in selling or serving members of the public ... under such circumstances that a breach of the peace might have been occasioned thereby" and that they did then and there "wilfully and unlawfully fail and refuse to disperse and move on

<sup>1</sup> The Petition misstates the holding of the Court below in asking this Court to review "The holding that a police justice (who acts ... knowingly to deprive persons of rights secured by the Constitution ... is immune from liability ... " (p. 12) The Court of Appeals did not so hold but limited the immunity of judges to liability in this case to an error of judgment or error of law stating: "A judge should not be put to a correct determination of the validity of a criminal statute at the hazard of being cast in damages for the making of a wrong guess."

when ordered to do so" by a law enforcement officer. (R. 110-11) They had been arrested at noon on September 13th, 1961, and were duly tried in the Police Court under Respondent Judge Spencer on the 15th. They were represented by counsel, including both a local attorney and the chief legal adviser for CORE. The unconstitutionality of the statute under which they were arrested was not raised. No jury trial was requested by Petitioners. *None of the Petitioners testified in their own behalf.* (R. 419, 151-2, 615) Petitioners were convicted by Judge Spencer of violation of Section 2087.5, *Mississippi 1942 Code*, copy of which is attached hereto as Appendix A, which made it a misdemeanor to congregate in any public place of business and refuse to move on on order of the police either with intent to provoke a breach of the peace or "under circumstances such that a breach of the peace may be occasioned thereby."<sup>2</sup>

The preceding May Judge Spencer had convicted a Negro, Thomas, of the same offense. There had been a trial de novo in the County Court and he had been found guilty and, apparently, at about this time he had appealed to the Circuit Court. Later, in 1964 the conviction was affirmed by the Supreme Court of Mississippi and the statute specifically held valid and constitutional. *Thomas v. State*, 160 So. 2d 657. The Supreme Court of the United States reversed the criminal conviction by per curiam opinion in April, 1965, 380 U.S. 524, 14 L.ed.2d 265, solely on *Boynton v. Virginia*, 364 U.S. 454, 5 L.ed.2d 206, i.e., solely on the ground that the statute as applied to a Negro in a restaurant in a terminal was contrary to the Interstate Commerce Statutes if the order of the police to leave was solely on account of race, i.e., on the application of the

<sup>2</sup> The statute was thus unlike that involved in *Edwards v. South Carolina*, 372 U.S. 229, decided, however, long after this decision by Judge Spencer.

statute in the particular case. The statute was not held unconstitutional on its face.

It was not until September, 1963, that Jackson municipal authorities were enjoined from enforcing certain other Mississippi statutes requiring segregation of facilities of interstate commerce (not in Section 2087.5). *Bailey v. Patterson*, 323 F.2d 201, certiorari denied 376 U.S. 910, 11 L.ed.2d 609.

This Court is well aware of the changes in legal decisions since 1961 and the vast number of lower courts reversed during that period.

Any issue as to whether or not Judge Spencer acted "knowingly to deprive persons of rights secured by the Constitution", as the issue here is incorrectly stated by Petitioners, has been finally determined. It was submitted to the jury under proper instructions (B. 632) and decided in his favor. The Court of Appeals merely reviewed the evidence and held that actually the District Court should have dismissed as to Spencer because there was no evidence to sustain a finding of such wilfulness or intent and that as a judge, having jurisdiction of the case, he was immune from liability in damages for an error of judgment. The case was thus remanded with an order to dismiss as to Spencer.

By so stating this issue here Petitioners seek to have this Court review a factual issue of consequence only in this particular litigation which this Court will not do. *Southern Power Co. v. North Carolina Public Serv. Co.*, 68 L.ed. 413, 263 U.S. 508; *General Talk. Pictures Corp. v. Western El. Co.*, 82 L.ed. 1273, 304 U.S. 175. Cf. dissent of Mr. Justice Harlan, Frankfurter and Whittaker in *Crumady v. "Joachim Hendrik Fisser"*, 3 L.ed.2d 413, 358 U.S. 423.

Petitioners cite only one case involving immunity of judges in Civil Rights actions under 42 U.S.C. 1983, i.e.,



*Picking v. Pa. R. Co.*, C.A. 3, 151 F.2d 240.<sup>3</sup> There the charge against the justice of the peace was that "... he denied and refused a hearing to the plaintiffs upon their arrest ... (and thereby) ... may have deprived the plaintiffs of their liberty *without due process of law* ...". Moreover, the holding there that an action under Section 1983 could be maintained in spite of the common law judicial immunity of the justice of the peace was based on the construction of the statutory provision that "*Every person who ... subjects or causes to be subjected any citizen ... to the deprivation of any rights ...*" was broad enough to include a judge. However, such construction would also necessarily require that it be broad enough to include state legislators who by enacting unconstitutional statutes could "*cause*" persons to be subjected to a deprivation of constitutional rights. This interpretation, however, was repudiated by this Court in *Tenney v. Brandhove*, 95 L.ed. 1019, 341 U.S. 367, holding that the Civil Rights statutes did not overturn the traditional common law immunity of legislators.<sup>4</sup>

Since *Tenney* there have been no decisions of any Circuit Court of Appeals in conflict with the holding of the Circuit Court of Appeals below that the Civil Rights Act creates no exception to the common law rule of judicial immunity from civil action for damages arising out of judicial acts. Cases in accord with the decision of the Court of Appeals below, where frequently certiorari has been denied by this Court, include: *Ray v. Huddleston*, C.A. 6, 327 F.2d 61, adopting the opinion in *Ray v. Huddleston*, 212 F. Supp. 343; *Rhodes v. Meyer*, C.A. 8, 334 F.2d 709,

<sup>3</sup> Judicial immunity was not considered in *McShane v. Moldovan*, C.A. 6, 172 F.2d 1016.

<sup>4</sup> This case also repudiated the argument of *Picking* based on legislative debate in 1871 during the enactment of the statute. In *Tenney* it was said: "The limits of §§1 and 2 of the 1871 statute ... were not spelled out in debate." Cf. *Brown v. Board*, 98 L.ed. 873, 347 U.S. 483, on the inadequacy of legislative history to resolve Civil Rights issues today.



certiorari denied 13 L.ed.2d 186, 379 U.S. 915; *Sires v. Cole*, C.A. 9, 320 F. 2d 877; *Haldane v. Chagnon*, C.A. 9, 345 F. 2d 601; *Arnold v. Bostick*, C.A. 9, 339 F. 2d 879; *Harmon v. Superior Court of State of California*, C.A. 9, 329 F. 2d 154; *Sarelas v. Sheehan*, C.A. 7, 326 F. 2d 490, certiorari denied 12 L.ed.2d 296, 377 U.S. 932; *Campo v. Niemeyer*, C.A. 7, 182 F. 2d 115; *Cawley v. Warren*, C.A. 7, 216 F. 2d 74; *Francis v. Crafts*, C.A. 1, 203 F. 2d 809, certiorari denied 98 L.ed. 357, 346 U.S. 835; *Kenney v. Fox*, C.A. 6, 232 F. 2d 288.

**II. *Certiorari should not be granted to review the holding that policemen are not liable in damages to persons who deliberately planned to be arrested and confined and provoked the arrest.***

Again petitioners have erroneously stated what the holding of the lower Court was. The Court below did not hold, as alleged by Petitioners, that policemen would not be liable in damages for a wrongful arrest merely because the person arrested performed a constitutional act knowing that the policeman might wrongfully arrest him. On the other hand the Court stated: "The question is not whether the appellants could lawfully dramatize their protests against racial inequality by attempting to eat in a wrongfully segregated lunchroom . . . It goes without saying that they might do so. Rather the question is whether, in so doing, can they include in their program *a planned arrest and confinement* and then successfully rely upon such confinement as the basis for recovery in an action for damages for false imprisonment."

Petitioners have confused acts done for the purpose of exercising a constitutional right where there could be arrest with acts done for the deliberate purpose of being arrested. The organization sponsoring Petitioners condones such acts, but usually recognizes that persons deliberately en-

gaged in actual civil disobedience to dramatize their rights must accept the legal consequences of their act. No one should condone such acts where they were for the purpose of or made use of to collect a money judgment for the very arrest and imprisonment they deliberately caused.

The Court below cited authorities to support its position under the tort principle of *volenti non fit injuria* (86 C.J.S., Torts, Section 12). It is also closely akin to Assumption of Risk. 86 C.J.S., Torts, 990-1. I.e., Assent by submitting voluntarily to known dangers with a realization of the risk resulting in an inability to base a tort action on harms produced by the assumed danger.<sup>5</sup>

Actions for damages under 28 U.S.C.A. 1983 must be tried on the basis of common law tort liability, i.e., "... should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Monroe v. Pape*, 365 U.S. 167, 5 L.ed.2d 492.

Petitioners have cited no case to the contrary, or no decision of this Court or of any Court of Appeals in conflict with the holding of the Court of Appeals of the Fifth Circuit herein.<sup>6</sup>

On the other hand, they merely argue that evidence was insufficient to justify any such finding. This was contrary to the opinion of the trial judge (R. 625) and contrary to the finding of the Court of Appeals. However, neither court granted Respondents a directed verdict but this cause is now remanded to the District Court for a determination by a jury of this very issue of fact. Here again Petitioners are relying for certiorari on a disputed factual issue.

<sup>5</sup> Mississippi recognizes the defense of assumption of risk in tort actions, although it has by statute been eliminated as a defense in a master and servant relationship. Cf. *Saxton v. Rose*, 29 So. 2d 646; *Elias v. New Laurel Radio Station, Inc.*, 146 So. 2d 558.

<sup>6</sup> I.e., "We think the tort principle of *volenti non fit injuria* applies to the claim asserted for a civil rights violation under 42 U.S.C.A. 1983 as well as to the common law action."

**III. Certiorari should not be granted to review the holding that under the facts here and after the finding of the jury here that Respondents were immune from liability for false imprisonment at common law under the Mississippi rule.**

Here again the Petitioners have confused the issue by the wording of their reason for granting the writ.

As the Court below pointed out, the action brought by Petitioners was twofold, i.e., a common-law tort claim for false imprisonment and a statutory claim for damages under 42 U.S.C.A. 1983.

The Court of Appeals merely held that under the facts in this record and after a jury verdict for the Respondents that under the controlling Mississippi law there was no liability on Respondents for false imprisonment at common law and the immunity of Respondents on this issue was affirmed.

The Court below had before it, in considering the common law cause of action, a large number of Mississippi cases holding that there could be no recovery of damages against a police officer merely because a subsequent trial acquits the defendant or because the defendant is discharged without trial if there was in fact probable cause for the arrest, and the arrest was made in good faith in the regular and proper manner.<sup>7</sup> *King v. Weaver*, 127 So. 718; *State v. Broom*, 58 So. 2d 32; *Forsythe v. Ivey*, 139 So. 615.<sup>8</sup> Cf.

<sup>7</sup> The question of "probable cause" being one for the jury. *Howell v. Wiener*, 176 So. 731; *Lenas v. Conway*, 105 So. 2d 762.

<sup>8</sup> "Probable cause" negatives actual misuse of the authority granted by statute. Nor is *Nesmith v. Alford*, C.A. 5, 318 F. 2d 110, certiorari denied 375 U.S. 975, 11 Led. 2d 420, in point, in that it was decided under the very different Alabama law where the act of an officer in arresting without a warrant was unlawful regardless of the presence of probable cause and where under the Alabama breach of the peace statute it was not a crime for persons to act in a peaceful manner merely because such lawful and peaceful conduct incites a breach of the peace by others.

Sections 2470 and 2474 of the *Mississippi 1942 Code*, copies of which are attached as Appendix B.

The Court below then raised the question of whether or not this rule was applicable although the arrest was made under a criminal statute which was later held unconstitutional and correctly stated that under the Mississippi law a common law cause of action for damages could not stand under such circumstances, citing *Golden v. Thompson*, 11 So. 2d 906.<sup>9</sup>

However, we again point out that the Court below was in error in assuming that the Mississippi statute had been declared absolutely void or unconstitutional on its face, i.e., regardless of how it was applied or the particular facts and circumstances of the application thereof. Criminal prosecution in *Thomas v. State*, Miss., 160 So. 2d 657, was merely reversed by this Court in 14 L.ed.2d 265 by per curiam opinion referring only to *Boynton v. Virginia*, 364 U.S. 454, 5 L.ed.2d 206. There again a criminal conviction was merely reversed and this Court pretermitted the constitutional issue and merely held that where the criminal defendant had been arrested at the request of the owner of a restaurant in the terminal of a carrier solely on account of race, the arrest was illegal under the Interstate Commerce Act.

We agree with Petitioners that the issue was "... whether the arrest was really in reliance upon the statute or whether the police really arrested petitioners because they were an integrated group and used the 'breach of the peace statute' as a sham justification for the arrest ... whether it was knowingly applied unconstitutionally".<sup>10</sup> However, this issue had been determined in favor of Re-

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<sup>9</sup> Also cited with approval in *Miller v. Stinnett*, C.A. 10, 257 F. 2d 910, where the Court held that the tests were whether or not the arrest and detention was made in good faith in reliance on the ordinance.

<sup>10</sup> Petition, p. 19.



spondents by the jury under instructions which the Court below found adequate.<sup>11</sup>

Petitioners have cited no authority from this Court or any other Court to the effect that the Mississippi law would not be controlling in a common law action for damages against policemen and no Mississippi authority in conflict with those cited by the Court of Appeals.

**IF CERTIORARI IS GRANTED, THEN THE COURT SHOULD REVIEW THE VAGUE AND INDEFINITE LANGUAGE OF THE OPINION OF THE COURT BELOW AND THE POSSIBLE INTERPRETATION THEREOF AS LIMITING THE DEFENSE OF POLICE OFFICERS IN ACTIONS UNDER 28 U.S.C. 1983 SOLELY TO WHETHER OR NOT PETITIONERS INVITED OR CONSENTED TO THE ARRESTS AND IMPRISONMENT FOR WHICH THEY SEEK DAMAGES.**

The Court below after dismissing the action as to the judge and after dismissing the action in so far as it sought damages for false imprisonment at common law, then reversed for errors in admission of evidence and remanded the case for a new trial on the issue of the liability of the police officer under 42 U.S.C. 1983.

The opinion of the Court below is, we submit, confusing as to what is exactly held.

The Court first points out that police officials do not have absolute immunity from arrests. No contrary claim is made. Respondents merely claim that they have the same quasi judicial immunity which protects police officers at

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<sup>11</sup> The instructions as a whole (R. 627-643) are somewhat inept and conflicting. This very conflict cured the ineptness thereof. When the jury was instructed that they could find for the Respondents if they found from a preponderance of the evidence that at the time of the arrest the officers had "probable cause to believe that the plaintiffs were guilty of the offense for which they were arrested", this was necessarily a charge that they must find that the police officers did not arrest Petitioners merely because they were an integrated group and did not knowingly apply the statute unconstitutionally.

common law, i.e., if the arrests were made on probable cause and in good faith, i.e., good faith reliance on the statute and good faith appraisal of the facts and circumstances.

The Court below first stated that there was "uncertainty" as to the extent to which immunity of police officials applied under the Civil Rights Act—thus indicating that to some extent there was certainly some immunity even under the Civil Rights Act.

The Court, however, then went further and said: "The defense of immunity is not available to the police appellees in this case."<sup>12</sup> If the Court was referring to complete immunity, we have no fault to find therewith. If, however, the Court meant that there could be no jury issue as to whether or not they were not under the particular facts and circumstances immune in an action under 28 U.S.C. 1983 on the determination by the jury that the arrests were legal and on probable cause and made in good faith, then, we submit, that the Court below was in error.

This above statement of the Court below was based only on two cases:

*Cohen v. Norris*, C.A. 9, 300 F. 2d 24, dealing solely with the sufficiency of a complaint against motion to dismiss, for damages against police officers allegedly subjecting the plaintiffs to unreasonable searches and seizures without a search warrant and not as an incident to any arrest, much less a valid arrest, i.e., a clear misuse of their authority as policemen. The Court did not preclude officers from a defense thereto but merely held that the complaint was sufficient. "The burden of proving exceptional circumstances which would authorize a search, without a search

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<sup>12</sup> And also in concluding the opinion the Court remanded the case "... so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment", as if this were the only defense available to them.

warrant, and not incident to a valid arrest, should be upon those who conducted the search, as a matter of defense." The Court carefully stated: "But here it is alleged that appellees had *unlawful purposes* in exercising force and in conducting a public search. Whether appellant can prove that such purposes existed, or what if any damages may have been sustained, are matters which are not now before us."

and

*Monroe v. Pape*, 365 U.S. 167, 5 L.ed.2d 492, again involving merely the sufficiency of the allegations of the complaint on motion to dismiss. Here again the officers allegedly had broken into the plaintiffs' home and routed them from bed and mistreated them and ransacked every room and detained them for ten hours without charges, all without a search warrant or an arrest warrant, i.e., a clear misuse of authority as policemen not only not acting under any statute or ordinance but acting in direct conflict with the local statutes and ordinances. The principal issue there was whether or not they were acting under color of state law when they merely abused their position, an issue not here involved. The Court then went no further, in holding the complaint sufficient, than state that the civil rights statutes did not require a criminal intent as did the criminal civil rights statutes, or "wilfulness", but that "Section 1979 (18 U.S.C. 1983) should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions."

Under the background of common law tort liability police officers have a quasi immunity from damages for false imprisonment if the arrest is made in good faith on probable grounds, i.e., this is a general principle of the common law, not one peculiar to Mississippi. 35 C.J.S., False Imprisonment, Section 25, frequently applied in the federal

courts. *Carr v. National Discount*, C.A. 6, 172 F. 2d 899, certiorari denied 94 L.ed. 495; *Ravenscroft v. Casey*, C.A. 2, 139 F. 2d 776, certiorari denied 89 L.ed. 596, 323 U.S. 745. It is thus no local rule of immunity unassociated with a generally recognized common law immunity.

Since *Monroe v. Pape* the federal courts have consistently continued to hold that actions for damages against police officers under the *Civil Rights Act* could be defended on the ground of probable cause for the arrest or the rational basis for the arrest and the ground that the officer in making the arrest did so in good faith in the performance of his official duties as he understood them, i.e., defend on the ground that the statute or ordinance was not a sham justification for the arrest and that it was not knowingly wrongfully applied.<sup>13</sup> *Smith v. Dougherty*, C.A. 7, 286 F. 2d 777 (1961), certiorari denied 7 L.ed.2d 97, 368 U.S. 903; *Pritchard v. Downie*, C.A. 8, 326 F. 2d 323 (1964); *Joyce v. Ferrazzei*, C.A. 1, 323 F. 2d 931 (1963); *Striker v. Pancher*, C.A. 6, 317 F. 2d 780 (1963); *Hurlburt v. Graham*, C.A. 6, 323 F. 2d 723 (1963).

If the apparent holding of the Court of Appeals is therefore in direct conflict with these decisions of other Courts of Appeal, can it be justified solely on the ground that three years after the arrests complained of the statute was held unconstitutional? *Monroe v. Pape*, supra, does not so hold but merely involved acts of officers in direct conflict with valid statutes.<sup>14</sup>

The Court of Appeals in its opinion cites no case holding that in an action under 28 U.S.C. 1983 there can be a recovery of damages against arresting officers when the

<sup>13</sup> And this is the defense that Respondent policemen urge that they have the right to make here.

<sup>14</sup> The Court below therefore has, we submit, no justification for the statement that "Inherent in the Monroe holding is the principle that good faith and reliance upon a state statute subsequently declared invalid are not available as defenses."



arrests otherwise non-actionable were made under a statute constitutional on its face but later held unconstitutional. That very court had previously held to the contrary. In *Whittington v. Johnston*, C.A. 5, 201 F.2d 810, the Court stated: "In invoking the Alabama statute, defendants were entitled to act upon the presumption that the statute is valid, as it has (at that time) not been authoritatively declared otherwise . . ."

This is also indicated in *Striker v. Pancher*, C.A. 6, 317 F.2d 780, and *Hoffman v. Halden*, C.A. 9, 268 F.2d 280.

The rule in Mississippi is that there can be no liability merely on this ground. The Court below merely stated that this "may be" a minority rule. Certainly there is a conflict of authority on this question among the various states and the Mississippi rule is not purely a local rule. However, we submit the Mississippi rule is the federal rule.

The controlling case is *Chicot County Drainage District v. Baxter State Bank*, 84 L.ed. 329, 308 U.S. 371, where the Court refused to apply the principle of absolute retroactive invalidity of a statute. Cf. *Thomas v. Chamberlain*, 143 F.Supp. 671, affirmed 236 F.2d 417, C.A. 6, following the Texas rule in a statutory civil rights action; *Cudahy Packing Co. v. Harrison*, 18 F.Supp. 250, applying the rule to the conduct of an officer under a federal statute which was later held void; *Phipps v. School Dist. of Pittsburgh*, C.A. 3, 111 F.2d 393, following *Chicot*.

Here, however, the Mississippi statute has not been held totally invalid, but merely that a criminal conviction would not stand where someone was put out of a restaurant in the terminal of a carrier solely on account of race. The police officers here would be entitled to the defense that the arrests were not made on account of race. The statute being valid on its face, the officers were under the duty of enforcing it if in the good faith exercise of their honest judgment and discretion they thought the enforcement

thereof was necessary. Policemen are not lawyers and they should not be required to pass on a possible future invalidation of the statute. If our police officers and their families are to be pauperized for enforcing what they believe to be valid statutes then the enforcement of criminal laws will sink to lower depths than it has already done in some areas. Policemen will be afraid to risk performing their duties.

### Conclusion

We submit that the Petition for Writ of Certiorari should not be granted because there is no merit therein and no justifiable reason for the granting of certiorari under Rule 19.

Also we had thought, and now think, that the issues with reference to the police officers should await the final outcome of this litigation and a final judgment herein prior to any review by this Court. However, if mistaken in this, and if this Court issues a Writ, then Respondents submit that this Court should review the additional issue submitted by them.

Respectfully submitted,

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**Certificate of Service**

The undersigned of counsel certifies that a true and correct copy of the foregoing Respondents' Opposition to Petition for Writ of Certiorari and Alternative Cross-Petition was this day mailed by United States mail, postage prepaid, to: Carl Rachlin, 38 Park Row, New York, New York, and Melvin Wulf, 156 Fifth Avenue, New York, New York, attorneys of record for Petitioners.

This the 25th day of March, 1966.

THOMAS H. WATKINS,  
*Of Counsel for Respondents.*

**APPENDIX A****MISSISSIPPI 1942 CODE**

§ 2087.5. Disorderly conduct—may constitute felony, when.

1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others in or upon shore protecting structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in subsection (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process



of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refusing to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof,

shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars (\$200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment; and if any person shall be guilty of disorderly conduct as defined herein and such conduct shall lead to a breach of the peace or incite a riot in any of the places herein named, and as a result of said breach of the peace or riot another person or persons shall be maimed, killed or injured, then the person guilty of such disorderly conduct as defined herein shall be guilty of a felony, and upon conviction such person shall be imprisoned in the Penitentiary not longer than ten (10) years.

2. The provisions of this act are supplementary to the provisions of any other statute of this state.

3. If any paragraph, sentence, or clause of this act shall be held to be unconstitutional or invalid, the same shall not affect any other part, portion or provision of this act, but such other part shall remain in full force and effect.

**APPENDIX B****MISSISSIPPI 1942 CODE****§ 2470. Arrests—when made without warrant.**

An officer or private person may arrest any person without warrant, for an indictable offense committed, or a breach of the peace threatened or attempted in his presence; or when a person has committed a felony, though not in his presence; or when a felony has been committed, and he has reasonable ground to suspect and believe the person proposed to be arrested to have committed it; or on a charge, made upon reasonable cause, of the commission of a felony by the party proposed to be arrested. And in all cases of arrests without warrant, the person making such arrest must inform the accused of the object and cause of the arrest, except when he is in the actual commission of the offense, or is arrested on pursuit.

**§ 2474. Arrests—no liability for if made legally.**

Officers and others who make arrests as authorized or required by law, shall not be liable on account thereof, civilly or criminally, notwithstanding it may appear that the party arrested was innocent of any offense.

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IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1966

Nos. 79 and 94

ROBERT L. PIERSON, *et al.*,

*Petitioners,*

—v.—

J. L. RAY, *et al.*,

*Respondents.*

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

**BRIEF FOR THE PETITIONERS**

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### ARGUMENT:

- I. A police justice, who knowingly and intentionally acts individually and in concert with the police to punish persons for exercising their constitutional rights, to enforce segregation laws, customs and usages, and to con-



vict persons under a statute of whose violation there was no evidence, is not immune from liability in damages under 42 U. S. C. §1983, which applies, without exception, to "every person", that was said by the Congress that enacted it to apply to such conduct by such judges, and that was intended to create a remedy for sham justice in the courts .....

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II. All that there was by way of "plan and purpose" to be arrested was foreknowledge that traveling as an integrated group might illegally subject the ministers to arrest. State officials who act under color of state law to deprive persons of their constitutional rights are not freed from liability under 42 U. S. C. §1983 by showing that those persons know that they might be arrested for traveling as an integrated group but nevertheless exercised their constitutional right to do so .....

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IN THE  
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—v.—

J. L. RAY, *et al.*,

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---

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

**BRIEF FOR THE PETITIONERS**

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**Opinion Below**

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 352 F. 2d 213.

The District Court for the Southern District of Mississippi, Jackson Division, wrote no opinion. Its judgment and order is at R. 440-442.

### **Jurisdiction**

The judgment of the Fifth Circuit Court of Appeals was entered on October 25, 1965. On January 21, 1966, by Order of Mr. Justice Black, the time within which to file a petition was extended to and including February 24, 1966, and by Order of Mr. Justice Black on that day further extended until February 28, 1966. The petition in Number 79 was filed on February 28, 1966. Respondents opposed the granting of certiorari but stated that if petitioners' petition was granted this Court should also review a question raised by respondents as to the meaning of the opinion of the Fifth Circuit. The Court granted both petitions and consolidated the cases on May 16, 1966, 384 U. S. 939. The jurisdiction of this Court rests on 28 U. S. C. §1254(1).

### **Statute Involved**

The statute involved is Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, 42 U. S. C. §1983.

As printed in Title 42, the Section reads:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress."

### Proceedings Below

Petitioners brought suit in the United States District Court for the Southern District of Mississippi, Jackson Division, against three policemen and one police justice of Jackson, Mississippi.\* The suit was for damages under (a) 28 U. S. C. §1343 alleging a cause of action under 42 U. S. C. §1983 and (b) 28 U. S. C. §1332 alleging diversity of citizenship and a cause of action for false arrest and imprisonment under Mississippi law. Judgments in favor of defendants-respondents were entered by Judge Mize upon a jury verdict.

Upon appeal, the Fifth Circuit (1) reversed the judgment as to the policemen with respect to the federal cause of action under 42 U. S. C. §1983 but remanded with instructions that plaintiffs should not be permitted to recover if they knowingly planned to go to a place where travelling as an integrated group would subject them to illegal arrest, (2) directed that the state law cause of action against the policemen should be dismissed and (3) held that the police justice was immune from suit under both causes of action and directed that the complaint against him should be dismissed.

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\*In addition to the persons named in the caption, there are the following additional petitioners and respondents: *Petitioners*: James P. Breeden, James G. Jones, Jr. and John B. Morris; *Respondents*: Joseph D. Griffith and David A. Nichols (both along with J. L. Ray members of the Police Department of the City of Jackson, Mississippi) and James L. Spencer, Police Justice of Jackson, Mississippi.

## Questions Presented

1. Whether a municipal police justice (a) alleged to have acted individually and conspired with police officers to have white and Negro ministers arrested, convicted and sentenced to jail for the sole purpose of enforcing the segregation laws, customs, or usages of the State of Mississippi, and (b) whose conviction of the ministers for congregating in an orderly fashion but under such circumstances that other persons might cause a breach of the peace was subsequently reversed at a trial *de novo* at the close of the prosecution's case on the ground that there was no evidence against the ministers, is immune from a suit for damages under 42 U. S. C. §1983, which (1) without exception makes liable in damages "every" person who deprives another person of his constitutional or other federal rights under color of state law, etc., and (2) was intended by the Congress that enacted it to apply to such conduct by such judges.

2. Whether proof that a group of Negro and white ministers chose to exercise their constitutional right to travel together in interstate commerce knowing that doing so might subject them to illegal arrest renders policemen who illegally arrested them free from liability in damages under 42 U. S. C. §1983 even if it is shown that:

(a) the arrest was in fact made to enforce the segregation laws, customs or usages of the State of Mississippi pursuant to which the bus terminal waiting room in which the ministers were arrested had never been entered by a Negro without his being arrested and was marked "white waiting room only—by Order of the Police Department";



(b) the persons arrested were completely orderly;

(c) the statute that purportedly was used to justify the arrests made guilty of "disorderly conduct" persons who congregate with others in a public place "under circumstances such that a breach of the peace might be occasioned thereby" and who refuse to move on upon request of a law enforcement officer;

(d) it was subsequently held at a trial *de novo* of the ministers that there was no evidence under that statute against them; and

(e) that statute was subsequently in another case held unconstitutional on its face by this Court.

3. Whether under the circumstances set forth in the preceding question the persons arrested are entitled to a directed verdict against the arresting officers on the issue of liability under 42 U. S. C. §1983.

4. Whether, assuming that under Mississippi law, applicable in the diversity cause of action, the police officers are not liable in damages for false arrest on the ground that they made an arrest under a "disorderly conduct" statute which was subsequently declared unconstitutional, the police officers would not nevertheless be liable if (a) the arrest was in fact made to enforce the segregation laws, customs and usages of Mississippi or (b) there was no cause to believe (as the trial *de novo* suggests) that the "disorderly conduct" statute had been violated.

## Statement

### **A. Petitioners' Arrest and Confinement.**

Petitioners are three white and one Negro Episcopal clergymen.\* As members of a "Prayer Pilgrimage" they sought, in September 1961, to visit church institutions in both the South and the North from New Orleans to Detroit (where they expected to report to their church convention) and to deliver and dramatize their "message to the Church that the Church must become, in every phase of its life, that which by the grace of God it is—one Holy Fellowship where racial barriers have been done away" (Defendants' Exhibit No. 1, R. 90).

On September 13, 1961, the clergymen arrived in Jackson, Mississippi, planning to take a Continental Trailways bus scheduled to leave shortly after noon the next day for Chattanooga, Tennessee. At approximately 11:30 a.m., petitioners and eleven other Episcopal clergymen (nine white, two Negro), all dressed in clerical garb, arrived at the Jackson Trailways Bus Terminal in three taxis from Tougaloo College where they had spent the previous night (R. 59-60, 121-122, 256-257, 319-320). While it was known that they had arrived in Jackson, no one had been advised at what time they would leave, and no crowd was present in the station at the time they arrived.

The entrance to the terminal waiting room was marked "White Waiting Room Only—By Order of the Police Department" (R. 338-339, 181-186, 358-359). As they passed the "white only" sign the ministers entered the waiting room and turned left to go into a small bus station restau-

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\* Pierson, Jones and Morris are white. Breeden is a Negro.

rant. No more than four or five had passed through the restaurant doors, when defendants Griffith and Nichols, Jackson police officers who had been waiting for the group to arrive,\* ordered the group to "hold it" or "come out" (R. 60-62, 122-124, 257-258, 319-320, 375-376).

Gathered together in the waiting room, outside the restaurant, the ministers were ordered by the police officers to "move along". Replying that they only wanted to eat, they asked why they could not do so. No reply came from the police except again "move on". Not doing so, the entire group of Episcopal ministers was arrested (R. 63-64, 125-126, 259, 320).

Respondent Ray, then captain, now deputy chief of the Jackson police, arrived a few minutes later.\*\* Without speaking to Nichols or Griffith, nor to anyone else in the station, he walked directly to the ministers: without ado he ordered them to move along. When they did not do so but explained that they were hungry and wished to eat before their bus departed, he also placed them under arrest, put them in the waiting paddy wagon and sent them to jail (R. 400, 66-67, 126-128, 252-261, 321-322).

The court below stated that the "prayer pilgrims were completely orderly" (352 F. 2d at 216; R. 445). The arresting officers conceded that the ministers were orderly and quiet (R. 349-350, 400-401, 410). Petitioners testified that (1) no one followed them into the station, (2) the

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\* Petitioner Jones testified that as the ministers passed the two police officers standing at the entrance to the waiting room he heard one of them say "shall we get them now or later" (R. 61).

\*\* Nichols had left the ministers in charge of Griffith in order to telephone headquarters. Nichols talked to Chief Pierce only to discover that Ray had already left for the terminal (R. 409).

waiting room was quiet and (3) no one in it threatened them by word or gesture (R. 62-65, 121, 124-128, 257, 258-260, 319, 321-323). That testimony was confirmed by Father Layton P. Zimmer, a fellow Episcopal priest who was in the station in nonclerical garb and who observed Petitioners' arrest (R. 376-378). Led by one of them, the arrested ministers recited the Lord's Prayer; persons in the terminal joined in (R. 64-65, 377).

A "crowd" followed them into the station in an "ugly" mood, they feared that the ministers might be attacked, was the explanation of the police (R. 342-343, 395-397, 406-407, 413-420).<sup>\*</sup> But when pressed about the crowd and its ugly mood, Officer Griffith conceded that "I just noticed maybe two or three of them mumbling, kind of saw them jabbering a little to each other . . . off at a distance, something like that" (R. 343, 420).<sup>\*\*</sup> Furthermore, there was no evidence whatsoever that any hostile persons were in the restaurant, which the police prevented the ministers from entering.

The police conceded that they made no effort whatsoever to arrest the persons whom they claimed were in an ugly mood (or mumbling at a distance).<sup>†</sup> Nor did they ask such persons to leave, or even say a word to them or caution or calm them in any way (R. 342, 401-402, 419-420). Far from

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<sup>\*</sup> The police testimony was not supported by any independent witnesses from among employees of the bus terminal or bystanders.

<sup>\*\*</sup> Similarly, Officer Nichols admitted that he did not mention any ugly mood when he left the ministers alone with Griffith and went to telephone the police station to obtain defendant Ray, an act hardly consistent with fear of a disturbance (R. 339).

<sup>†</sup> The police never testified how many such persons there were. The only police testimony on the number of persons in the station was that 12 to 15 had been there prior to the arrival of the ministers and 20 to 25 followed the ministers in.



contending that it would have been difficult to control those who were in an ugly mood (or mumbling), the police said that they didn't even ask any such persons to leave because the ministers, by their presence, "was the cause of the violence if any might occur" (R. 347). Nor did the police ever tell the ministers that they were being arrested because others might attack them.

That the real aim of the police was to enforce segregation customs and laws is also suggested by the police testimony (1) that it was wrong for whites and Negroes to be together in bus stations or anywhere (R. 335-336, 347); (2) that a Negro had never gone into that part of the station and not been arrested (R. 345), (3) that "if [the ministers] did it again today" they would again arrest them (without any reference to a supposed ugly crowd) (R. 340).. The police "white only" sign outside the waiting room also pointed to the intention to deny Negroes the right to enter the station.

#### ***B. Petitioners' Conviction by Police Justice Spencer.***

Two days after their arrest, remaining in jail during that time, petitioners were tried by defendant Spencer, a police justice serving at the pleasure of the Mayor of Jackson (R. 183). Petitioners were tried upon a "General Affidavit", in which defendant Ray had said that they

"... with intent to provoke a breach of the peace, did then and there willfully and unlawfully congregate with others in or around . . . a place of business engaged in selling or serving members of the public, and did then and there fail or refuse to disperse and move on as then ordered to do so by affiant, a law enforcement officer of the City of Jackson, Mississippi, a

municipality, contrary to the laws and ordinances in such cases made and provided, and against the peace and dignity of the State of Mississippi" (R. 73-75, 159, 267).

Seven months after petitioners' convictions, the prosecution sought and obtained leave to amend the affidavit in respect of the three white petitioners (Pierson, Morris and Jones). The changes of substance were (1) striking the words "with intent to provoke a breach of the peace, did then and there willfully and unlawfully" and substituting "under such circumstances that a breach of the peace might be occasioned thereby, did then and there" and (2) adding the words "willfully and unlawfully" prior to the words "fail or refuse" (R. 80-82, 159, 267).\*

The affidavit in its original and its amended form tracked the terms of Section 2087.5 of the Mississippi Code, enacted in 1960. In a case, not dissimilar to that of petitioners, which also arose from Police Justice Spencer's court, *Thomas v. Mississippi*, 380 U. S. 564 (1965), Section 2087.5 was declared unconstitutional. Cf. *Brown v. Louisiana*, 383 U. S. 131 (1966); *Cox v. Louisiana*, 379 U. S. 536, 547, 551 (1965); *Edwards v. South Carolina*, 372 U. S. 229 (1963).

Defendant Spencer convicted Petitioners of violating that statute and sentenced them to the maximum sentence—four months in jail and \$200 fine.

Admitting that there had been no evidence that Petitioners were disorderly in any way (R. 352-353), defendant Spencer acknowledged (in a portion of his deposition that the trial court excluded from evidence) that he had

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\* In addition, "disperse" was substituted for "disburse".

assumed a person was never entitled to decline to obey an order of a police officer, no matter how improper, and that he had never researched the law on the subject (R. 356). Instead, at petitioners' trial, he had ready at his hand and upon completion of the testimony, read to them an article of religion from the Episcopal Book of Common Prayer dealing with the duty of priests to obey civil authorities; then he gave his judgment that petitioners were "guilty" of violating that article (R. 366-371).

Each respondent individually, and respondents together, i.e., Judge Spencer and the policemen, were alleged by the complaint to have had persons arrested and convicted for violating the segregation laws, customs, policies and usages of the State of Mississippi (R. 5). Judge Mize refused to permit questioning of Police Justice Spencer designed to establish Spencer's role in the alleged conspiracy (R. 352-371). His relationship to the various cases encompassed in *Thomas, supra*, and to Chief, then Captain, Ray, who made most of the arrests therein, could not be shown.

Police Justice Spencer had tried almost all the cases (some 50 trials and 300 defendants) which had previously arisen out of the efforts of integrated groups to use the Jackson bus terminal (R. 356-357).

**C. *The Subsequent Decision at a Trial de Novo That There Was No Evidence Against Petitioners.***

Petitioners' convictions were vacated after the prosecution had put in its evidence at trials *de novo* in the County Court of Hinds County. Petitioner Jones was the first to be retried. After the City offered its evidence, Jones moved for a directed verdict of not guilty; the County Judge granted the motion since the City showed no violation of the statute (R. 333-334). The County Court then

granted the prosecutor's motion to nol. pros. the cases against Morris, Breeden\* and Pierson on the grounds that the evidence against them was the same as the evidence against Jones (R. 155-156, 164, 272):

**D. *The Trial and Appeal of This Action.***

The jury found for respondents after the trial court over objection of counsel had permitted petitioners to be examined about the following matters amongst others:

1. Whether they agreed with the Communist Party's race relations program as set forth in the *Daily Worker* of May 26, 1928 (R. 105-111);

2. Whether they believed in the abolition of all laws prohibiting intermarriage of persons of the Caucasian and Negro races (R. 285-286, 108);

3. Whether they supported the "Freedom Ride Invasion" of Jackson (R. 214-219) and whether they supported the purposes and activities of those groups that call themselves Freedom Riders (R. 97-102, 149-170, 174-175, 180, 243, 278, 279, 281, 282-283);

4. Whether their attorneys in Police Justice Spencer's court had previously represented many Freedom Riders (R. 287);

5. Whether their trial counsel was the general counsel of the Congress of Racial Equality (CORE) (R. 287-288, 152-153, 215-216); and

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\* In an unimportant manner the record is incorrect as to Petitioner Breeden, who also received a nul pros, although the record indicates a motion to dismiss granted (R. 333). Breeden was not tried on April 9, 1962, and thereafter the Ray affidavit was amended before the Jones Trial to its present form.



in-Law of Governor Rockefeller as 'Freedom Rider' " (R. 291-292).

6. Whether petitioner Pierson had suggested any corrections in a magazine article that had referred to a New York newspaper headline stating "Arrest Son-

In addition, Judge Mize permitted nine letters written by petitioner Morris to prospective and actual members of the Prayer Pilgrimage to be introduced and extensively used in cross-examination concerning the beliefs of Father Morris and the aims of the Prayer Pilgrimage (R. 167-182, 187-247). (See footnote at p. 27 *infra*.)

On the basis of the letters, the defense contended (1) that the ministers knew that travelling as an integrated group might subject them to arrest and jailing and (2) that the ministers prepared for the possibility that some of their members would be arrested and jailed.

On appeal, the Fifth Circuit Court of Appeals held the following:

#### A. *Policemen Defendants*:

1. The judgment in their favor in the civil rights cause of action, 42 U. S. C. §1983, should be reversed because the trial court permitted questions dealing with petitioners' views on race as compared with (1) the *Daily Worker* of May 26, 1928, and (2) the Freedom Riders with whom, said the court, no connection was shown.

2. Petitioners would normally be entitled to a directed verdict on the issue of liability in the civil rights cause of action because the arrests were improper *but* the case should be remanded for a hearing on the merits because recovery would be precluded if

it were shown that petitioners planned to go to places where their orderly travelling as an integrated group might subject them to arrest.

3. Without regard to the reasons for which they made the arrests or the circumstances existing at the time of the arrests, the policemen were immune from liability under the diversity cause of action for false arrest because the statute under which they purported to arrest petitioners had not yet been held unconstitutional.

B. *Police Justice Spencer* was immune from liability under both causes of action on the ground that he was a judicial officer. The complaint against him should therefore be dismissed.

### Summary of Argument

A. In their cross-petition respondents did not contend that the Fifth Circuit erred in reversing the decision of the district court on the ground that improper questions (e.g., whether petitioners agreed with the views on race relations of a May 1928 issue of the *Daily Worker*, etc. as stated above) had been asked. The dispute between the parties relates to the terms of the Fifth Circuit's remand.

B. It was error to hold that Police Justice Spencer was immune from suit under 42 U. S. C. §1983, despite the allegations and the proof (limited as it was by the trial court's exclusionary rulings) that he knowingly and intentionally acted individually and in concert with the police to punish petitioners for exercising their constitutional rights, and to enforce the segregation laws, customs and usages of Mississippi.

Providing for no immunities, the statute applies to "every" person who acts under color of state law to deprive other persons of their constitutional rights. Members of Congress who opposed the statute did so specifically on the ground that it would subject judges to liability. Others, who sponsored and supported the statute, said they did so in part because they were shocked at the defiance of law by racist judges. From the legislative history we read that Congress intended a state judge, just as any other person, who knowingly and maliciously uses his office to deprive persons of their civil rights, to be liable.

The only court to consider even a portion of that legislative history so held. *Picking v. Pa. R. Co.*, 151 F. 2d 240 (3rd Cir. 1945).

This Court's decision in *Tenney v. Brandhove*, 341 U. S. 367 (1951), holding that state legislators are immune from suit under the predecessor of Section 1983, even should it be regarded as correct, does not control the application of the statute to judges. On its face, the statute applies to those who *act* under color of law, not those who *enact* laws. Congress was aware of the distinction (so were the framers of the United States Constitution, which provides for a legislative but not a judicial immunity).

C. It was also error to hold that, even though defendants did illegally deprive the ministers of their rights under color of state law, defendants would nevertheless be free from liability under 42 U. S. C. §1983 upon a showing that the ministers went to Jackson with a "plan and purpose of being arrested and jailed." 352 F. 2d at 220.

The ministers *did* nothing to initiate their arrest and jailing other than to enter the white waiting room as an integrated group. Their orderly conduct has not been dis-

puted. That they had foreknowledge that traveling as an integrated group might subject them to arrest, and knowing this that they chose nevertheless to exercise their Christian duty and constitutional rights to so travel, this is the extent of their "plan and purpose". If, thereafter, they are in fact arrested, illegally, and suffer harm thereby, does the policeman who arrested them escape liability because he was sufficiently contemptuous of the Constitution to make known in advance his intention to act illegally? Would the angry Congress that enacted the Civil Rights Act of 1871 have intended to free the open and notorious law breaker from liability? What other intent did the 1871 Congress have but to hold liable those officials who defied Federal law, and whose known official lawlessness was directed against loyal whites and all blacks? And Congress created a damage remedy.

D. Assuming the court below to be correct in holding that it is the law in Mississippi (contrary to most jurisdictions) that a policeman is free from liability for false arrest for making an arrest under a statute subsequently held unconstitutional, it was error to hold that the diversity cause of action against the policeman should be dismissed. In the first place, a question exists whether the subsequent holding in the trial *de novo* that there was no evidence against the ministers under the "disorderly conduct" statute renders the police liable without further inquiry. Freeing the petitioners, the *de novo* trial was not concerned with the constitutionality of the statute but simply with the total failure of proof. Thus, the issue does not arise of the liability of police officers for arrests under a statute subsequently declared unconstitutional but of not making out a case. On this point we urge that petitioners should have had a directed verdict as requested at the trial,



or at least a new trial at which petitioners can prove the illegal nature of the arrests.

That their real aim was to preserve the segregated waiting room, in which any Negro who entered was arrested, can be seen from the police testimony itself. No threats from others present in the waiting room can be inferred from any credible testimony. To the contrary, weak as it was and conflicting, the police testimony was reduced under pressure to statements that a few unspecified persons were mumbling. No effort whatsoever to calm or restrain such alleged, but not identified persons was made by the police. Indeed, it was the police who kept the ministers from being separated from whatever few mumblers or glarers there were. The police stopped the ministers from entering a restaurant though they could have excluded those who were supposedly hostile to the ministers. There was no evidence that any threat to the peace would have arisen in the restaurant.

The evidence that the police used the "disorderly conduct" statute as a sham basis for the arrests, that their real aim was to preserve segregation, that they did not act in good faith, is strong. Painted on the sign outside, the police order made the room a "white waiting room only". See *Boynton v. Virginia*, 364 U. S. 454 (1960); *Morgan v. Virginia*, 328 U. S. 373 (1946). It was held at the criminal trial *de novo*, after all, that there was no evidence under the "disorderly conduct" statute under which the arrests were purportedly made. Couple this with the views of all respondents in support of segregation and the real purpose of the arrests is made clear.

**E.** A directed verdict on the issue of liability under 42 U. S. C. §1983 should be entered against the policemen defendants.

The fact that the statute under which the arrests were purportedly made was unconstitutional on its face is sufficient to require a directed verdict against the policemen even though the formal holding of unconstitutionality was not made by this Court until after the arrests. That was the traditional rule. That is what the 1871 Congress intended. That is the rule under §1983. See *Smith v. Allwright*, 321 U. S. 649 (1944); *Lane v. Wilson*, 307 U. S. 268 (1939); *Nixon v. Herndon*, 273 U. S. 536 (1927); *Myers v. Anderson*, 238 U. S. 368 (1915). As this Court has said in interpreting section 1983, "it is immaterial whether [the state official's] conduct is legal or illegal as a matter of state law." *McNeese v. Board of Educ.*, 373 U. S. 668, 674 (1963).

The statute under which the police purported to act (though there was subsequently found to be no evidence under it against the ministers) is repugnant on its face to the Constitution, as this Court found. It makes it a crime to act peacefully and quietly, in the name of the Constitution, in a way that others may deem offensive. Who should bear the risk of the damages caused by arrest: the policemen who purport to make the arrest under such a repugnant statute or the person arrested? Congress in 1871 came down on the side of the person arrested.

## ARGUMENT

### I.

A police justice, who knowingly and intentionally acts individually and in concert with the police to punish persons for exercising their constitutional rights, to enforce segregation laws, customs and usages, and to convict persons under a statute of whose violation there was no evidence, is not immune from liability in damages under 42 U. S. C. §1983, which applies, without exception, to "every person", that was said by the Congress that enacted it to apply to such conduct by such judges, and that was intended to create a remedy for sham justice in the courts.

A. Neither the complaint nor this argument contends that Police Justice Spencer should be held liable merely because the statute under which he convicted petitioners was subsequently held unconstitutional, nor for any mere error in judgment.

The question, rather, is whether he should be immune from liability if any or all of the following facts can be shown: (a) he convicted petitioners in order to enforce Mississippi's segregation laws, customs, and usages, (b) he convicted petitioners of congregating with the intent of provoking a breach of the peace or under such circumstances that a breach of the peace might be occasioned thereby although there was no such evidence and without regard to whether or not there was such evidence, (c) he acted in concert with the police to punish persons who challenged Mississippi's segregation laws, customs and usages. The question, in other words, is whether a police justice should be immune if he acts knowingly and willfully

to deprive persons of, ~~the~~ constitutional rights, rights intended to be protected under Section 1983.

B. The statute, Section 1 of the Civil Rights Act of 1871, 17 Stat. 13, provides for no exceptions, no immunities. It applied to "any" person who under color of state law, etc., deprives "any" person of his federal constitutional or statutory rights.\*

C. The legislative history of Section 1 of the Civil Rights Act of 1871 makes it clear that Congress intended to render liable state judges who under color of state law, etc., knowingly and willfully deprived persons of their constitutional rights.

The Congress was concerned not with protecting good judges or other public servants against having to face charges of wrongdoing but rather with defiance of law by mobs and by bad officials, including judges. Congress was concerned that "immunity is given to crime, and the records of the public tribunals are searched in vain for any evi-

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\* As altered by the reviser who prepared the Revised Statutes of 1878 and as printed in 42 U. S. C., the statute refers to "every" person who deprives "any" person of his rights. "Every" is just as inclusive as "any", but the original parallelism of "any" in describing culprit and victim makes it even clearer that Congress did not intend *sub silentio* to grant immunity to judges who administer sham justice.

The reviser removed other language that textually made it even clearer that no such immunity was intended. As enacted, the section stated that any person shall be liable for depriving persons of their constitutional rights, etc., under color of state law, custom, etc., "*any such law, statute, ordinance, regulation, custom or usage to the contrary notwithstanding.*" (Emphasis supplied to the words that were removed.)

The reviser lacked authority to alter law substantively. See Revised Statutes of the United States, 1878, Preface, p. 4; Appendix, pp. 1092-1093; 19 Stat. 268, ch. 82, §4, as amended by 20 Stat. 27, ch. 26. Title 42 has not been enacted into positive law.



dence of effective redress." \* It was shocked at the record of many judges.\*\* It was, indeed, the breakdown of justice that gave rise to the need for legislation. See generally *Monroe v. Pape*, 365 U. S. 167, 174-183, 235-236 (1961).

If it be said that it is harsh or unwise to subject the state judiciary to suits alleging that they knowingly and

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\* *Cong. Globe*, 42 Cong., 1st Sess. (Congressman Lowe of Kansas, 3/31/71, p. 374, col. 3).

\*\* See, for example:

Senator Sherman of Ohio (summing up conference report): "Spreading terror and violence . . . now exist unchecked by punishment, independent of law, uncontrolled by magistrates." *Cong. Globe*, 42 Cong., 1st Sess., 4/19/71, p. 820, col. 2.

Congressman Rainey of South Carolina: "The courts are in many instances under the control of those who are wholly inimical to the impartial administration of law and equity." *Id.*, 4/1/71, p. 394, col. 3.

Congressman Beatty of Ohio: "The remedy is needed because of 'prejudiced juries and bribed judges.'" *Id.*, 4/3/71, p. 429, col. 2.

Senator Osborn of Florida: "These men with hands stained with blood, hostile to every man who stood by his country during the war, determined by fair means or foul, that loyal men shall not remain in power, ought not to sit upon juries and administer the laws enacted to punish their own crimes." *Id.*, 4/13/71, p. 654, col. 2.

Congressman Garfield of Ohio: "Even where the laws are just and equal on their face, yet by a systematic maladministration of them, or a neglect or refusal to enforce their provisions, a portion of the people are denied equal protection." *Id.*, 4/4/71, App. p. 153, col. 3.

Congressman Porter of Virginia: "The outrages committed upon loyal men there are under forms of law." *Id.*, 4/4/71, App. p. 277, col.

Congressman Burchard of Illinois: "... if . . . in its judicial tribunals one class is unable to secure that enforcement of their rights and punishment for their infraction . . . the State has not afforded to all its citizens the equal protection of the laws." *Id.*, 4/6/71, p. 315, col. 1.

Senator Pratt of Indiana: "[The laws] only fail in efficiency when a man of known Union sentiments, white or black, invokes their aid. Then Justice closes the door of her temples." *Id.*, 4/6/71, p. 505, col. 3.

(Continued on the following page)

willfully acted to deprive a man of his civil rights, the simple answer is that Congress in 1871 intended harsh remedies to check bloody terror, stubborn defiance, abuse of legal process and sham justice.

As this Court has said in construing a civil rights act enacted one year before section 1983:

"... the history of the events from which [the statute] emerged illuminates the purpose and means of the statute with an unmistakable light. We think that history leaves no doubt that, if we are to give [the statute] the scope that its origins dictate, we must give it a sweep as broad as its language.

. . . . .

"The purpose and scope of the [statute] must be viewed against the events and passions of the time."  
*United States v. Price*, 383 U. S. 787, 801, 803 (1966).

A bloody civil war had been fought. After it, Congressmen calling themselves "radicals" took over. They acted in a radical fashion. They ousted state governments in the rebel states and installed military governments. They gave the Negro the vote. In the House they overwhelmingly voted to impeach President Johnson and then in the Senate came within one vote of the two-thirds majority necessary to oust him from office. In the field of justice they had given military governors law enforcement powers; they

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Congressman Voorhees of Indiana: "The courts . . . fail and refuse to do their duty in the punishment of offenders against the law." *Id.*, 4/6/71, App. p. 179, col. 3.

See also the complaint of a Louisiana loyalist to Carl Schurz that "men who held commissions in the rebel army, who signed the ordinance of secession, . . . who took a leading part in the rebel movement" were acting as judges in the southern states. Quoted in Stampp, *The Era of Reconstruction, 1865-1877* (Knopf 1965) at p. 76.

had suspended the writ of habeas corpus, and they had denied this Court jurisdiction to hear appeals in habeas corpus cases. (*Ex parte McCordle*, 7 Wall. (74 U. S.) 506 (1868).) See generally, Stamp, *The Era of Reconstruction 1865-1877* (Knopf 1965).

After terror against and injustice to the newly freed black men and the loyalists spread in the South, Congress enacted the Civil Rights Act of 1871. Other sections of that Act were potentially far harsher than applying Section 1 to judges. See, e.g., Sections 3, 4, and 6.

All the members of Congress who spoke on the problem, explicitly stated that the section applied to judges. None disagreed. See *Cong. Globe*, 42d Cong., 1st Sess., 1871: Congressman Arthur of Kentucky, 3/31/71, p. 365, col. 3, p. 366, col. 1; Congressman Sheldon of Louisiana, 3/31/71, p. 368, col. 1; Congressman Lowe of Kansas, 3/31/71, p. 376, col. 1; Congressman Lewis of Kentucky, 4/1/71, p. 385, col. 1. Cf. Senator Thurman of Ohio, 4/13/71, p. 217, col. 1 (Appendix). And see *Monroe v. Pape*, *supra*, 365 U. S. at 233, n. 49.

The legislative history of Section 2 of the Civil Rights Act of 1866, 14 Stat. 27, also supports the conclusion that the 1871 Congress did not intend silently to exempt state judges who knowingly and willfully deprived persons of their constitutional rights. It does so because (i) the similar terms of the earlier Act were specifically referred to as a guide to the 1871 Act by its principal sponsor, Congressman Shellabarger, when he introduced the 1871 Act, *Cong. Globe*, 42d Cong., 1st Sess., 1871, 3/28/71, p. 319, col. 3, printed in Appendix, p. 68, col. 1 (see also *Monroe v. Pape*, *supra*, 365 U. S. at 171) and (ii) the mood of the

earlier Congress casts light upon that of the later Congress. President Andrew Johnson vetoed the 1866 Act on the ground, among others, that it subjected state judges to criminal liability for depriving persons of their civil rights. Cong. Globe, 39th Cong., 1st Sess., 3/27/66, pp. 1679, 1780, col. 2. Congress re-enacted the Act over the President's veto and in so doing specifically stated that it intended that judges who knowingly used their office to deprive persons of their civil rights should be punished.\*

D. The only case to examine any of the above legislative history, *Picking v. Pa. R. Co.*, 151 F. 2d 240 (3rd Cir. 1945), held that a state judge who knowingly violated a person's constitutional rights was not immune. See "Liability of Public Officers To Suit Under The Civil Rights Acts", 46 *Colum. L. Rev.* 614 (1946). See also *McShane v. Moldonan*, 172 F. 2d 1016 (6th Cir. 1949). Cf. *Viles v.*

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\* See Senator Trumbull of Illinois, Chairman of the Committee on the Judiciary, who led the successful effort to overrule the veto, at *id.*, 4/4/66, pp. 1758-59, *passim*, and in particular:

"But it is said that under this provision judges of the courts and ministerial officers who are engaged in the execution of any such statutes may be punished. . . . I admit that a ministerial official or a judge, if he acts corruptly or viciously or under color of an illegal act may be and ought to be punished. . . ."

"The assumption that State judges and other officials are not to be held responsible for violations of United States laws, when done under color of State statutes or customs, is akin to the maxim of the English law that the King can do no wrong. It places officials above the law. It is the very doctrine out of which the rebellion was hatched."

See also Senator Johnson of Virginia, *id.*, 4/5/66, p. 1778, col. 1; Senator Cowan of Pennsylvania, 4/5/66, p. 1783. Congressman Lawrence of Ohio, the only speaker on the subject in the House said:

"It is better to invade the judicial power of the State than permit it to invade, strike down, and destroy civil rights of citizens. . . ." *Id.*, 4/7/66, p. 1837, col. 1.



*Symes*, 129 F. 2d 828 (10th Cir. 1942); *Blackman v. Stone*, 101 F. 2d 500 (7th Cir. 1939); *Mitchell v. Greenough*, 100 F. 2d 184 (9th Cir. 1938); *Green v. Elbert*, 63 Fed. 308 (8th Cir. 1894). However, following this Court's holding in *Tenney v. Brandhove*, 341 U. S. 367 (1951), that state legislators are immune from suit under 42 U. S. C. §1983, several federal courts have held that it follows from *Tenney* that state judges are immune. None of those courts refer to the legislative history that shows the contrary.

But *Tenney*, even if it is regarded as correct, is distinguishable. Congress intended to cover judges, even if it did not intend to cover legislators. The statute on its face covers those who *act* under color of law, not those who *enact* laws.\* The principal problem in 1871 was not legislation. It was intimidation and sham justice.

E. Judges are the essential cog in a system of sham justice, in the enforcement of segregation. Spencer and others like him are the very persons the 1871 Congress sought to make liable. So long as they are ready to mask the intention of the police to arrest persons for daring to challenge illegal segregation laws and customs by permitting the purported use of breach of the peace or disorderly conduct statutes, sham justice will win out. So here, Spencer stated that a citizen must always obey the police. The police knew from past experience that he could be relied upon to convict integrated groups who used the bus terminal. He convicted the ministers of a crime for

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\* See that distinction made explicit during the debate on the analogous provisions of Section 2 of the Civil Rights Act of 1866. *Cong. Globe*, 39th Cong., 1st Sess., 4/5/66, p. 1758, col. 1 (Senator Trumbull of Illinois). The United States Constitution itself mentions a legislative immunity, but no judicial immunity. Article 1, Section 6.

which there was no evidence. Petitioners should be permitted to prove that individually and in concert with the police Spencer willfully and knowingly sought to deprive them of their constitutional rights. Is it less than true to state that had the police not known that respondent Spencer would convict Petitioners, and others like them, who obeyed honorable religious scruples rather than time-worn illegal segregation customs, they probably would not have made these arrests?

F. In other contexts, it has been contended that it is good policy to exempt judges from suits based upon their official acts even though malice is alleged. See, *e.g.*, *Bradley v. Fisher*, 13 Wall. (80 U. S.) 375 (1871). The same reasons have been put forward to justify granting immunity to other public officials, *Gregoire v. Biddle*, 177 F. 2d 579, 581 (2d Cir. 1949),\* even those quite far removed from the pinnacles of responsibility, *Barr v. Matteo*, 360 U. S. 564, 572-574 (1959).\*\* But, apart from policy, it surely is not unconstitutional for Congress to say that state judges should have to meet charges that they misused their office knowingly to deprive persons of their constitutional rights. That is what the 1871 Congress intended. That Congress sought not to protect good justices but to provide a remedy against sham justice.

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\* Judge Learned Hand, the writer of the opinion in *Gregoire*, thought that Section 1983 applied to judges. *Burt v. City of New York*, 156 F. 2d 791, 793 (2d Cir. 1946).

\*\* Quite apart from the legislative history that shows that Congress did intend to cover state judges, one of the difficulties in carving out an exemption for judges is the lack of basis to distinguish between judges and other officials.

## II.

All that there was by way of "plan and purpose" to be arrested was foreknowledge that traveling as an integrated group might illegally subject the ministers to arrest. State officials who act under color of state law to deprive persons of their constitutional rights are not freed from liability under 42 U. S. C. §1983 by showing that those persons know that they might be arrested for traveling as an integrated group but nevertheless exercised their constitutional right to do so.

A. Nothing in this case by way of "plan and purpose" other than foreknowledge that traveling as an integrated group might subject the members of the group to arrest has been shown. As admitted by the police and found by the court below, the ministers did nothing to initiate arrest other than to enter the bus terminal as an integrated group.\* Foreknowledge that a reasonable chance existed that respondents would arrest and convict petitioners for

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\* The letters of petitioner Morris show that the ministers recognized (realistically) the possibility, indeed the likelihood, that they would be arrested because they were traveling as an integrated group (R. 167-182, 187-247). Plans were made on that assumption, including attention to bail and to the desirability of keeping some of the group out of potential arrest situations so that they could finish the pilgrimage and because bail money was limited. But from the outset those seeking martyrdom were asked not to apply (R. 177-178). And Morris, in his letters, hoped for legal changes that would mean "no jail—not because we aren't prepared to go, but so that the barrier might simply fall for the benefit of everyone" (R. 226). From the letters can also be gleaned the conviction that the jailing of ministers for traveling as an integrated group would constitute a "witness" that would help to demonstrate the commitment of the Church to justice and the evil of injustice. But knowledge that one's arrest might hasten the end of injustice coupled with willingness to face arrest does not render immune the person who in fact makes an illegal arrest.

no legitimate reason cannot be a basis for denying any liability on part of respondents to petitioners, any more than if instead of arresting petitioners, respondents had physically beaten them. In both cases illegal hands would have been laid upon the ministers, the only difference being those hands instead of doing violence, used less violent means but caused the incarceration of petitioners for several days, and in the case of Jones, whose bond money was slower in coming, for approximately twenty-one days. One might as well say that those who ended their days in Dachau shared the guilt with those who put them there, by remaining in Germany when everyone knew how vicious the Nazis were.

B. Under the decision of the court below, the more openly and notoriously defiant and contemptuous of the Constitution, the less likely that a state official will be held liable in damages for violating the Constitution. Under that theory, an official who goes on national television publicly to tear up the Constitution and announce that he will arrest and jail any black man seen walking with a white man ensures his freedom from damages for making such an arrest by the very publicity he gives to his illegal intent.\*

Such a reward for defiance of law and order is repugnant. See *Cooper v. Aaron*, 358 U. S. 1, 16-19 (1958); *Buchanan v. Warley*, 245 U. S. 60, 81 (1917).\*\* Surely a Congress

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\* Such a threat might in itself give rise to an action for damages under Section 1983 on behalf of those who could show that they were deterred from exercising their rights.

\*\* This Court said in *Cooper*, 358 U. S. at 16: "The constitutional rights of respondents are not to be sacrificed or yielded to the



whose very reason for acting was that the Constitution and the laws of the United States were being openly and notoriously defied with the aim of deterring Negroes and their white allies from exercising their human and civil rights would not have intended to reward defiance of law and order.

C. The right that the ministers chose to exercise despite their knowledge that the police might arrest them was a constitutional right. In determining whether a person is a volunteer and therefore is not injured or has assumed a risk—both of which are of course merely labels for the conclusions that under the circumstances damages ought not to be recovered—it is relevant to consider not only the offensiveness of the conduct of the defendant but also the social and personal importance of the action of the plaintiff.

Under the common law of assumption of the risk or consent, a defendant who by his own wrong compels the plaintiff to choose between two evils is not permitted to say that the plaintiff is barred from recovery because he made the choice. Valuable legal rights need not be surrendered because the defendant has threatened the plaintiff with harm if he exercises the right. See *Restatement of Torts*, §496 E, comment e, and 496 B, comments e-j; *Prosser on Torts* (3rd ed.), pp. 465-466. Where amusement parks are involved, it is acceptable to say with Cardozo that "the timorous may stay at home." *Murphy v. Steeplechase*

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violence and disorder which have followed upon the actions of the Governor and Legislature. As this Court said some 41 years ago in a unanimous opinion in a case involving another aspect of racial segregation: 'It is urged that this proposed segregation will promote the public peace by preventing race conflicts. Desirable as this is, and important as is the preservation of the public peace, this aim cannot be accomplished by laws or ordinances which deny rights created or protected by the federal Constitution.' *Buchanan v. Warley*, 245 U. S. 60, 81."

*Amusement Co.*, 250 N. Y. 479, 483, 166 N. E. 173 (1929). Not so where constitutional rights are involved. Had the ministers not the right to hope that the police would not continue their illegal conduct; or if arrested that Judge Spencer would not convict? To believe otherwise is to accept evil indefinitely and to despair of hope for decency.

D. The "plan and purpose" defense proposed by the court below arises only after it has been found that the arrests were illegal. Congress in 1871 created a damage remedy primarily to help those who dared to assert their constitutional rights in the face of illegal efforts to maintain white supremacy and primarily to hold those who openly defied the Constitution and laws in order to preserve white supremacy. In other words, this case.

### III.

A directed verdict on the issue of liability under 42 U. S. C. §1983 should be entered against the policemen defendants.

A. Putting aside, momentarily, the strong evidence of police bad faith, the question raised by respondents' cross-petition is whether Congress in 1871 intended to hold liable police officials who arrested persons under statutes subsequently held unconstitutional under the Federal Constitution.

At common law police officers were traditionally held liable for making warrantless arrests under statutes that subsequently were held unconstitutional. See Field, "The Effect of an Unconstitutional Statute in the Law of Public Officers: Liability of Officers for Action or Non-action," 77 U. Pa. L. Rev. 155, 177 (1928). There is no reason to

suppose that the 1871 Congress intended to change that rule? The language of Section 1983 is directly applicable. It makes federal rights supreme over state law, whether expressed in statute or custom. As this Court has said in interpreting Section 1983,

"... it is immaterial whether [the state official's] conduct is legal or illegal as a matter of state law."

*McNeese v. Board of Educ.*, 373 U. S. 668, 674 (1963).

B. This Court has assumed without question that a person harmed by a state official's action taken under a state statute subsequently held unconstitutional may recover damages against that state official. See *Smith v. Allwright*, 321 U. S. 649 (1944); *Lane v. Wilson*, 307 U. S. 218 (1939); *Nixon v. Herndon*, 273 U. S. 536 (1927); *Myers v. Anderson*, 238 N. Y. 368 (1915). Voting rights were involved in those cases but the principle stands without regard to the particular nature of the case. Were there any difference, it is that Section 1983 more clearly gives the damage remedy to the person arrested under a state statute subsequently held repugnant to the Federal Constitution than it does in voting cases. The Civil Rights Act of 1871 grew out of concern with the maladministration of justice, not interference with the right to vote.

C. Respondents complain of the harshness of holding liable policemen because the state statute under which they purported to act was subsequently held unconstitutional. But freeing such policemen from liability also is harsh—harsh on the person arrested unconstitutionally who would not be made whole for the harm done on account of the unconstitutional arrest.

Furthermore, enforcing a statute subsequently held unconstitutional is not necessarily an innocent act, certainly not in the case before us. Is it really so surprising that the state should not make criminal those who, peacefully, quietly, and without any threat or inconvenience to others, act, in the name of the Constitution, in a way that others may deem offensive? See *Nesmith v. Alford*, 318 F. 2d 110, 121 (5th Cir. 1963). Was it not obvious that the police should make some effort to calm or caution the supposedly "ugly crowd" (or those mumbling in the distance)? In any event, Section 1983 cuts through such questions. The reliance here was not innocent reliance upon a statute later found to be unconstitutional, but rather upon the expectation that Police Justice Spencer would convict. The convictions were reversed not upon grounds of unconstitutionality of the statute, but because there were no grounds for that arrest under the statute.

The policemen who acted unconstitutionally under a state law are liable whether the holding of unconstitutionality comes sooner or later. The 1871 Congress came down on the side of the person whose constitutional rights were taken away.



## IV.

The evidence that the police used the "disorderly conduct" statute as a sham basis for the arrest, the real aim of which was to preserve segregation, was strong. The court below, therefore, erred in dismissing the diversity cause of action.

Even if it is the law in Mississippi (contrary to most jurisdictions) that a policeman is not liable for false arrest merely because the statute under which he made an arrest was subsequently held unconstitutional, the court below erred in concluding that the diversity cause of action should consequently be dismissed.

In the first place, there is the question whether the finding by the County Court at the trial *de novo* that there was *no* evidence against the ministers under the "disorderly conduct" statute renders the police liable without further inquiry. In no way does the diversity cause of action hinge upon the unconstitutionality of the statute, and it was error for the Fifth Circuit to assume so. At the trial *de novo* the complaint was dismissed, not upon the credibility of each side's evidence at the end of the case, but upon the fact that there was no evidence showing a violation of the statute. Since the trial before Judge Mize was tainted by prejudicial improperly admitted evidence warranting reversal, the jury verdict for respondents in no way affects this issue.

Ample support is in the record from which a jury could find that the police used the "disorderly conduct" statute as a sham basis for the arrests, the real purpose which was to enforce segregation law and custom. The police conceded that the ministers were orderly. The ministers'

testimony was that there was no threat from others in the waiting room. The police testimony to the contrary was weak and conflicting, reduced under pressure to statements that a few persons were mumbling. The police admitted that they made no effort to calm, caution or restrain such persons. Indeed, the police stopped the ministers from entering a restaurant where, at least as far as the record shows, there were no such persons. The waiting room was, by "order of the police" posted for whites only. No Negro had entered without being arrested. The police thought it was wrong for whites and Negroes to be together in bus stations or anywhere else.

Even *Golden v. Thompson*, 194 Miss. 241, 11 So. 2d 906 (1943), cited by the court below to justify its dismissal of the diversity cause of action, requires that the police at least act "in good faith in reliance" on the statute subsequently held unconstitutional. In the case before this Court all testimony points not to reliance upon the constitutionality of the statute, but upon a compulsion to preserve unlimited segregation as the custom of Mississippi, and to use the full power of the law to do so. Even subsequent to reversal at the trial *de novo* for lack of evidence we have the testimony of the police that the arrests would have been made again.

### CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be

(1) reversed in so far as it dismisses the cause of action under 42 U. S. C. §1983 against Police Justice Spencer, and such cause of action should be remanded to the trial court for a new trial;

(2) modified in so far as it orders a new trial for the policemen defendants with respect to the cause of action under 42 U. S. C. §1983, so as on the new trial (a) to eliminate any immunity based upon the fact that petitioners knew they might be arrested for traveling as an integrated group, and (b) order a directed verdict on the issue of liability;

(3) reversed in so far as it dismissed the diversity cause of action against the policemen defendants which cause of action should be remanded and an order to direct a verdict for petitioners should issue, or at the least, a new trial.

Respectfully submitted,

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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 79

ROBERT L. PIERSON, ET AL, *Petitioners,*

*vs.*

J. L. RAY, ET AL, *Respondents.*

No. 94

J. L. RAY, ET AL, *Petitioners,*

*vs.*

ROBERT L. PIERSON, ET AL, *Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

**BRIEF FOR RESPONDENTS IN CAUSE NO. 79  
AND PETITIONERS IN CAUSE NO. 94**

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IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

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No. 79

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ROBERT L. PIERSON, ET AL, *Petitioners,*

*vs.*

J. L. RAY, ET AL, *Respondents.*

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No. 94

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J. L. RAY, ET AL, *Petitioners,*

*vs.*

ROBERT L. PIERSON, ET AL, *Respondents.*

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**BRIEF FOR RESPONDENTS IN CAUSE NO. 79  
AND PETITIONERS IN CAUSE NO. 94**

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**Introductory Statement**

This Court has granted certiorari in the case of Pierson, et al, v. Ray, et al, decided by the United States Court of Appeals for the Fifth Circuit and reported at 352 F.2d 213.

Certiorari was granted on petition of Robert L. Pierson, et al, jurisdiction resting under 28 U.S.C. 1254(1). Respondents, J. L. Ray, et al, filed an "Opposition" to the Petition for Writ of Certiorari. They then filed what under Mississippi practice would have been a cross-appeal, but which under the practice of this Court was called an "Alternative

*Cross-Petition for Certiorari*'' to review, if certiorari was granted on the Pierson petition, the holding of the Court of Appeals that Respondents who were police officers and were sued for damages under 42 U.S.C. 1983 could not defend on the ground of good faith in enforcing a state statute on probable cause. This Court granted both petitions, the one of Robert L. Pierson, et al, being No. 79 and the one of J. L. Ray, et al, being No. 94. This Court then consolidated the cases. To save confusion we will hereinafter at all times call Robert L. Pierson, et al, "Petitioners" and call J. L. Ray, et al, "Respondents".

The statutes involved are not only Section 1 of the Civil Rights Act, or 42 U.S.C. 1983, but also Section 2087.5 of the *Mississippi 1942 Code, Recompiled*. A complete copy of said statute is attached hereto as Appendix A.

### Questions Presented

Petitioners, three white and one Negro Episcopal clergymen, were part of a group of fifteen Episcopal clergymen who were arrested by Respondents Ray, Griffith and Nichols, policemen of the City of Jackson, Mississippi, and tried by Respondent Spencer, the municipal justice of said city. The four Petitioners here brought suit in the United States District Court for the Southern District of Mississippi, Jackson Division, against all four Respondents jointly for damages in the amount of \$44,004.00.

The Complaint was in two counts, one for money damages under 42 U.S.C. 1983 and one for money damages for common law false arrest and imprisonment. Judgment on jury verdict in favor of Respondents was entered in the District Court.

Upon appeal the Fifth Circuit reversed the judgment and remanded the case. A full copy of the opinion of the Fifth Circuit is found R: 444.



Petitioners have, we submit, misunderstood and incorrectly stated the holding of the Court below. The Court first held that Judge Spencer was entitled to a directed verdict and that the court below should have dismissed as to him on his motion at the end of the testimony on the ground of judicial immunity. The Court then held that police officials are entitled to limited or partial immunity under the common law in an action for false imprisonment if under the facts there was probable cause for the arrest.<sup>1</sup> It did not hold, as stated by Petitioners, "... that the state law cause of action against the policemen should be dismissed", but merely held that Petitioners "were not entitled to a directed verdict of liability on the false-imprisonment claim" and reversed and remanded the case for a new trial in accordance with the opinion. The Court then held that Petitioners could not recover under 42 U.S.C. 1983 if a jury found that Petitioners went to Jackson not only contemplating the possibility of being jailed, but with a deliberate design and plan that they should be arrested, i.e., if they had such a design and plan, they were not entitled to recover money damages for having accomplished their objective.

Respondents agree with and seek the affirmance of each of the above holdings.

The Court then remanded the case because of errors in admission of evidence for another trial in accordance with the opinion.

By cross-petition Respondents point out that the Court below also held that the police officers had no immunity under 42 U.S.C. 1983, i.e., not even limited or partial immunity even if the jury should find that they acted in good faith under a state statute valid on its face on probable cause, i.e., that the Civil Rights Act completely abrogated

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<sup>1</sup> As the jury had found.

even the common law limited or partial immunity or privilege of police officers. With this Respondents do not agree and submit that if the cause be reversed and remanded for a new trial that this defense is available to them and the case should be again tried on this issue also.

The questions therefore presented in Cause No. 79 are:

(1) There is no civil liability for money damages on police officers for common law false arrest where the officers acted in good faith on probable cause and no common law liability of a judge presiding over a court having jurisdiction.

(2) *42 U.S.C. 1983* does not abrogate or destroy judicial immunity.

(3) Police officers are not liable for damages under *42 U.S.C. 1983* if under the facts it is found that Petitioners were arrested because of a deliberate design and plan to be arrested, i.e., Petitioners cannot put into practice a program and conspiracy of planned arrest and confinement and then successfully rely upon such arrest and confinement as the basis for recovery in an action for money damages for false imprisonment. This would be equally applicable under common law false imprisonment.

In Cause No. 94 there is therefore presented the question:

(4) Are police officers automatically liable under *42 U.S.C. 1983* with no defense whatsoever, if the persons arrested are later acquitted, even though they acted in good faith under a state statute valid on its face on probable cause, i.e., does *42 U.S.C. 1983* completely abrogate all limited and partial common law immunity or privilege of police officers?

It must also be remembered:

1. This is not a cause involving an appeal from a criminal conviction. On the other hand, it is a suit for money damages for false imprisonment. Proof necessary to sustain a conviction is much greater than proof to sustain probable cause for an arrest, *Pritchard v. Downie*, 326 F.2d 323, and different rules and principles of law apply.

2. The arrests involved here occurred in September 1961 at a time when the civil rights uprising had just begun and when the law thereasto was not established. Also at that time the populace of the City of Jackson was very aroused and actual violence imminent. This would not be true in Jackson at this time although it is still true in other locations. The occurrence must be looked at from the viewpoint of that period. "Applicability of the Civil Rights Act to facts must be determined with reference to standards of constitutional protection current at the moment defendant acted." *Bowens v. Knazze*, D.C. Ill., 237 F. Supp. 826 (1965).

3. Respondents are not here arguing for any absolute immunity or absolute privilege of police officers, but only for a partial or qualified and limited privilege or immunity from damages when acting on probable cause and in good faith.

4. This case does not involve the jurisdiction of the court under the diversity statute and does not involve the jurisdiction of the court on any ground. Jurisdiction is admitted.

5. This cause does not merely involve the sufficiency of the Complaint. Most reported cases on the subject are only cases where the complaint has been dismissed without

a hearing. We are here discussing the issues presented after full trial on the merits on proper jury instructions and admissible evidence. Cases merely refusing to dismiss a complaint do not rule on or rule out or preclude defenses thereto such as good faith and probable cause.

6. The occurrences here involved were prior to the 1964 Civil Rights Act. Cf. *People v. Galamison*, 342 F.2d 255, cert. den. 14 L.ed.2d 272. The police officers here therefore did not violate any provision of that Act.

7. The Mississippi Breach of the Peace Statute, Section 2087.5, Appendix A, is not and has never been held unconstitutional on its face or per se, although unquestionably it can under some facts and circumstances be so enforced as to deprive parties of their civil rights. Section 2087.5 is not vague and indefinite. It does not make it a misdemeanor merely to refuse to obey the order of an officer. However, it does make it a misdemeanor if there is also (1) crowding or congregating with others, *and* (2) if the defendant is in a place of business engaged in selling or serving members of the public, etc., *and* (3) if there is an order to disperse or move on by a law enforcement officer, *and* (4) if the order is disobeyed, *and* (5) if there exists circumstances such that a breach of the peace may be occasioned<sup>2</sup> thereby or violence in others might be caused. If such conduct actually leads to a breach of the peace or incites a riot then the offense is made a felony. Nor can it be retroactively held that the enforcement thereof under the facts and circumstances here, valid at the time, deprived Petitioners of their civil rights. Because Petitioners in their brief repeatedly state, on all issues, that this statute is void on its face requiring a directed verdict against the police officers, our position is briefed as Appendix B hereto.

<sup>2</sup> Unlike the Alabama statute involved in *Nesmith v. Alford*, C.A. 5, 318 F.2d 110, cert. den. 11 L.ed.2d 420.



We submit that this case must be reversed and remanded to the District Court for a new trial on all issues except the liability of Judge Spencer, and the finding of the Fifth Circuit on his immunity as a matter of law should be affirmed. However, if the Court below was in error in holding that introduction of certain evidence was reversible error, then this cause should be reversed and the judgment of the District Court reinstated in that there had been a jury verdict for Respondents.

### **Statement of Facts**

On September 13, 1961, at about 11:20 a.m. fifteen Episcopal clergymen, twelve white and three Negro, all in full clerical garb, made a ceremonious entry as a group into the waiting room of the Continental Trailways Bus Station in Jackson, Mississippi. The fifteen clergymen proceeded across the waiting room toward the coffee shop in the bus station and as they were entering the coffee shop two police officers of the City of Jackson, Respondents Griffith and Nichols, told them to stop. The clergymen, including the four Petitioners here, obeyed the order and came back into the waiting room and congregated there standing in a group so as to block the stairs and congregating so as to be in full view of all of the occupants of the bus station waiting room.

Respondents Nichols and Griffith told the crowd several times to "Move along". None of the group obeyed the order. Instead the Lord's Prayer was said in unison. These Respondents then stated that the crowd was under arrest. The officers then called Respondent Chief Ray. When Ray arrived he again merely ordered the group of clergymen to move along, giving the order several times. No one obeyed the order. Chief Ray then again declared the group under arrest and himself led them through the waiting room to the paddy wagon and took them to the City

Jail in Jackson. The arrests were made under Section 2087.5 (See Appendix A). Respondents in so doing were admittedly at all times courteous and considerate.

There was a conflict of fact as to whether or not there was probable cause for the police officers to believe that the acts of the group of clergymen might cause violence on the part of the crowd in the waiting room. Petitioners' testimony was to the effect that although there were people watching them they were quiet and making no threatening gestures. The testimony of Respondents, on the other hand, was to the effect that the summer and fall of 1961 was a very abnormal time in Jackson immediately following the influx of the "Freedom Riders" in Alabama which had led to riots and bloodshed; that their later trip to Jackson had caused the City to be very tense. That all news medium had carried to the public the general information that Petitioners were coming and that there was much resentment thereof by the people of Jackson. Chief Ray testified:

"A. I arrived at the Trailways bus terminal about 11:30 or 11:35. As I approached the terminal from the rear through the lot there, I was approached by a gentleman as I was entering there, and he told me that I had better hurry and get inside, and there was going to be some serious trouble. I immediately walked into the terminal, and it was an unusual amount of people in the terminal, and they were in a very dissatisfied and ugly mood, I would call it. And the focus point was near the entrance to the cafeteria, where a group of 15 ministers were standing. \* \* \* The circumstances was there that was such that had I not removed the cause or the root of the trouble, there would have been violence and possibly bloodshed." (R. 395, 397)

He further stated:

"A. 'As I have already described, they were an advertised group, and I have already told you that has been almost a month since the Freedom Riders were there and people were back kind of peaceful, kinda', and of course, when this advertised group came out in the paper and through the radio, there was a tense situation again, and they thought it was another movement of Freedom Riders. We had worked real hard to prevent any violence, and we didn't want to start again'." (R. 349)

Respondent Nichols confirmed this testimony and stated that some twenty-five to thirty people followed the group from the taxi into the station and that there were about that many more already in the station; that they were mumbling and in a very ugly mood, moving about and talking. (R. 406)

This testimony was further confirmed by Respondent Griffith who stated that he arrested them because they would not move on and if he had not "there would be violence and bloodshed. . . I felt we have a clean city here and I hope and pray that we can keep it this way and not have violence and bloodshed." (R. 416) That the crowd was in an ugly mood as reflected by the expressions on their faces and were making threatening gestures. He testified:

"Answer: 'The people of the City of Jackson was in a tense mood at that time, and they came in as a group as they did and the other people in the Trailways bus station was in an ugly mood. You could hear some mumbling in their voices and expressions on their

faces.' \* \* \* Question: 'Did they have threatening gestures?' Answer: 'Yes.' " (R. 342)

There was no testimony whatsoever that the arrests were made merely because Petitioners were an integrated group, but that they were made because there was danger of actual violence in the crowd. There was no proof whatsoever that the City police were in the habit of arresting every integrated group, where there was no actual danger of violence, or that the Jackson police did on this occasion or ever use the statute as a sham justification for an arrest or that they did not enforce the statute without discrimination against any individual or group where violence was imminent.

There is very strong evidence that the fifteen Episcopal clergymen belonging to the group that were arrested by Respondents deliberately planned for and worked toward their being arrested by the police officers of the City of Jackson. There is, of course, a conflict of fact. Petitioners state that they were witnesses for integration and merely knew that there was danger of or a possibility of their being arrested. On the other hand, from their own written evidence there clearly appears that they had planned to and were on the trip for the purpose of becoming "*Witnesses for Incarceration*" and went into the terminal waiting room with deliberate intent to provoke an arrest, picking a time and place and manner of so entering as to best assure themselves that they would be arrested.

The group, including other clergymen beside the fifteen arrested, were members of the Episcopal Society for Cultural Racial Unity, an organization of Episcopal clergy but not connected with the church itself. The pilgrimage was organized by and under the direction and control of the Reverend John B. Morris, one of the Petitioners. He per-



sonally solicited the personnel of the group which was to take this pilgrimage beginning in New Orleans on to Jackson and then to Detroit where they were having a general meeting of ESCRU. The trip was made so that the pilgrims or members of the group, or at least some of them, could end up at the Detroit meeting and witness their efforts to promote the desegregation in the church and in society. (R. 134) However, beyond that they also planned and intended to get arrested so that they could go to the Detroit meeting and be "Witnesses for Incarceration."

Petitioner Morris obtained participants in the pilgrimage by letters addressed to Episcopal clergymen who were members of the ESCRU. Therein he stated frankly the purposes of the pilgrimage and the various plans for the pilgrimage and their arrest during it. He wrote frequent letters, after the group was organized, giving details as to their purposes and plans and issuing orders thereasto. These letters were in the nature of Directives from the Commander of the group to the members thereof.

One of the earlier Directives addressed "To Pilgrimage Applicants" was dated August 4, 1961. (R. 205) This letter contained the following language:

"You are one of twenty-two priests accepted for the Prayer Pilgrimage tentatively. A list of these persons accompanies this letter. . . .

"I may be in error, but I believe that 16 of the accepted applicants are white and 6 are Negro. I am sorry that we do not have more of the latter and, also, that thus far we do not have any of still other backgrounds. . . .

"The Greyhound Company said yesterday that equipment might not be available. . . The fact that equipment may be unavailable for charter purposes, however, will not cause any significant change in our plans. We can take regularly scheduled runs. . . . An advantage to us would come in cost for presumably only a portion of the pilgrimage group will be able to complete the trip and it would be a rather expensive item to have a half-empty bus make the last part of the journey. . . .

. . .

"Depending on various things above we might change our starting point to Jackson, Mississippi. . . . We would only miss one school in New Orleans and could go over to Vicksburg to visit All Saints' College before any of the group kept an appointment with the Jackson jailer. . . .

. . .

"... At the starting point, whether New Orleans or Jackson, the Rev. Wyatt T. Walker, Executive Director of the Southern Christian Leadership Conference, will direct our preparations connected with non-violent discipline. He will come to Detroit also in all likelihood to be on hand when those who have been in jail arrive probably just in time for the ESCRU dinner on September 20th.

"... If there are 30 participants we should plan on between one-half and one-third completing the entire tour so that the concern might be carried to each place and; symbolically, the torch carried to Convention. This would mean that between fifteen and twenty would sojourn awhile in probably a Mississippi jail. A few might seek light refreshments the morning of the 12th

when we are in Vicksburg and they would then be held there by the Vicksburg jailer. The greater number intended by the witness of incarceration would probably choose to go to Jackson for this. Those who will bear the burden of watching colleagues taken off in the paddy wagon (as I did in Jackson two weeks ago) will continue the trip so that the message of concern may be carried to Detroit. Presumably the group will be able to determine who does what in a manner agreeable to all. I would hope that some would be left to go on through, and, indeed, the bail factor may require that we limit those to be jailed to around ten if there is to enough money to bail them out when decided.

"... In nearly all other cases connected with Freedom Riders a certain length of time in the jail is sufficient to make the witness effective. I think that we should be very flexible in this matter: If someone has to hurry home because of an emergency or to be on hand for Sunday services it should be up to him when he is bailed out. There are preliminary hearings three times a week in Jackson so that the most you would have to stay in jail pending a hearing would be two days. Above that it is optional. ...

"... If some reason you would prefer to take care of your own bail please let me know and this will further strengthen our available resources for others. Should something develop in the next few weeks to indicate that a sufficient amount for bail for at least ten of our group is not available I will write you again. In the present context of things we will want to send at least ten of the pilgrimage participants to jail.

"... it might be helpful for you to alert any press persons known to be sympathetic ... they might want to do an advance story. Don't be reticent or self-

conscious about the matter if your concern is to strengthen our witness through its advertisement in advance. . . ." (R. 205-211)

The details as to the plans for being assured that they would be arrested, how many would be arrested, etc. were repeated over and over again in the various later Directives. CORE had agreed to put up some of the money for bail. One letter stated:

"The suggestion has been made that we hope that the entire group might visit the jail . . . but an alternative would be for a portion of the group to be bailed out forthwith and continue the trip. . ." (R. 224)

At another point he suggested that only ten might be able to go to jail.

Morris stated that he had already arranged for a lawyer to be furnished by CORE with whom he would go over the "legal points". (R. 226)

On August 19th he advised them:

"... All in all, though, I think you can count on becoming *familiar* with the Jackson jail, or at least a goodly portion of our group can. Perhaps one of our number spoke for others when he said: 'About jail—Here am I, send me. I'm not brave, but I'm obedient.'

"We ~~we~~ arrive in Jackson late Tuesday afternoon it will be time for supper and we can seek to have it then and there which will mean that the Jackson jailer would be our host for the evening. I am trying to determine whether we could stay at a college campus that night if it seemed advisable to await the next day for this appointment with destiny. I do not see any reason for not having our supper upon arrival, but I'll wait until my meeting Monday with CORE's lawyer to



see what procedure would be best. If we stayed overnight we would have to purchase individual tickets the next day and be headed for an intended trip. . .” (R. 226-7)

He carefully instructed the participants:

“... For reading in the jail I suggest the P.B., your Bible, and other things you may want to meditate upon.”

He again stated:

“I shall prepare a news release for September 3rd revealing final plans and giving the names of those to be involved. . . Don't be surprised if the arresting officers and others are quite civil and polite: It's a poor picture of the Northern image of the South when 'riders' tell the press how pleasantly surprised they were. . .” (R. 228-9)

In still another letter he stated:

“There are many possibilities, but at the present it looks like it may be the better part of valor to *consign* only a dozen men to jail. The picture could change. Some may want to stay in jail or await help from the Church back home. . . .” (R. 239)

See the series of Directives made exhibits to the testimony of the witness Morris (R. 176, 188, 193, 196, 205, 222, 238, 240, 244).

Thus, Petitioners well knew the danger of and were anticipating actual violence from others as a result of their appearance under the carefully planned circumstances. They knew that their trip had been highly publicized by all news medium and had planned for their appearance and

trip to be so publicized and instigating the publicizing thereof. They knew of the tension among the local people and knew that their acts would be very controversial. They had been carefully trained to expect violence from others and to submit thereto.

Petitioners thus definitely planned in advance and conspired that a certain number of their group would actually go to jail and be "witnesses for incarceration". There was no mention in the Directives of later collecting money damages from the arresting police officers. However, they immediately after their acquittal sought such money damages. They admittedly knew that the circumstances were such that a breach of the peace or violence of the crowd would probably occur and had congregated with the deliberate intent to provoke such a breach of the peace. The acts of the group constituted a conspiracy to cause a breach of the peace.

The planned procedure was followed out and the planned results accomplished and the fifteen clergymen were arrested and jailed. Petitioners admit that they were regular processed upon arrival at the jail and that a proper affidavit was filed by Chief Ray in the police court of the City of Jackson. No bail was requested at that time although it was obtainable. They were arrested at noon on the 13th. They were duly tried in the Police Court under Respondent Judge Spencer on September 15th. From then on, of course, the police officers had no further participation in what occurred. They were represented by counsel before Judge Spencer, including a local attorney and the chief legal adviser for CORE. No jury trial was requested by Petitioners although one could have been had by them if requested. None of the Petitioners testified in their own behalf although Judge Spencer would have heard the same and he did hear evidence from Respondents. Petitioners were on this evidence convicted and given four months in

jail and \$200.00 fine. Release on bail was immediately available to them but only obtained later at various times at the convenience of Petitioners. The courtesy with which they were treated was freely admitted.

Judge Spencer under the evidence before him was of the opinion that the Petitioners were guilty of violation of the ordinance. (R. 369) The fact that he might have been in error on the question of law as to whether mere disobedience of the order of a police officer could be a misdemeanor is immaterial, the question being one which has caused differences of opinion among judges of superior courts. Nor is it material that in rendering his opinion he referred to provisions of the Episcopal Prayer Book, the reference not being his standpoint for judging the guilt or innocence of the Petitioners. (R. 369-70)

There was no proof whatsoever of any conspiracy entered into by Judge Spencer with reference to these cases. Each, and every one of the Respondents testified that Judge Spencer had nothing whatsoever to do with the arrest of Petitioners and the cases were never discussed with him and that he knew nothing of the cases until they came up for trial in his court and then were decided only on the evidence submitted.

The case was tried de novo on appeal to the County Court of Hinds County, Mississippi. Petitioner Jones was tried before a jury and a directed verdict for said Petitioner was granted. Petitioners are in error in stating that it was granted because there was no evidence to support the same. The judgment of the Court was merely that it was granted. (R. 82) This decision could have been either on the ground that the evidence was *insufficient* in the judgment of Judge Moore to show a violation or that it was insufficient for a conviction in view of his interpretation of the statute. Or, as suggested by Respondents themselves, it could have been

purely on the basis of respect for the Episcopal Church and a dislike to allow a conviction of clergymen. (R. 148-9) In the other cases judgments of nolle prosequi were entered.

The judgments in the County Court were entered in the late Spring of 1962. By September 10, 1962, this action was brought by these Petitioners for damages against all Respondents as joint tort-feasors in the amount of \$11,101.00 for each of the four Petitioners.

At the trial of this case before a jury there was ample evidence to support the finding of the jury that Respondent officers in making the arrests were motivated solely by proper concern for the preservation of order and the protection of the general welfare and that they acted in good faith and that the police officers were justified in taking action to prevent what in their opinion, based on reasonable grounds, would provoke a breach of the peace in the form of violence, i.e., that was probable cause for the arrest.

If Judge Spencer is not entitled to absolute immunity, there was ample evidence to show that in making his decision he was motivated by his concept or understanding of the law and the facts. Two years later the Supreme Court of Mississippi came to the same legal conclusion on similar facts. *Thomas v. State*, 160 So.2d 657.

If there were no reversible errors in the admission of evidence then this jury verdict would be controlling. Otherwise, Petitioners are merely entitled to a new trial on these issues.



## POINT I

**The Court Below Correctly Held That There Was No Liability for Damages of the Police Officers Under Petitioners' Common Law Count Which Was a Tort Claim for False Imprisonment if the Officers Acted in Good Faith and Had Reasonable and Probable Cause to Believe That the Statute Was Being Violated.**

The Court below in its opinion on this point stated:

*"The doctrine of immunity which has long prevailed with respect to judicial officers, has been extended to other officers of government whose duties are related to the judicial process. Bar v. Matteo, 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434, Norton v. McShane, 5th Cir. 1964, 332 F.2d 855, cert. den. 380 U.S. 981, — S. Ct. —, 14 L. Ed. 274; Gregoire v. Biddle, 2nd Cir. 1949, 177 F.2d 579, cert. den. 339 U.S. 949, 70 S. Ct. 803, 94 L. Ed. 1363. In this cause, as in Norton v. McShane, supra, the doctrine of official immunity protects the police officers from common-law false-imprisonment liability...."* (R. 448-9) (Emphasis added.)

The Court below then held that Mississippi law controlled and that under Mississippi law probable cause was a defense for common-law false arrest and that therefore the trial court's instruction on probable cause was not error. In so doing, the Court below stated:

*"The appellants complain of the trial court's instruction on probable cause, and an objection to it was made and preserved. If the trial court had been correct in its assumption that Section 2087.5 was a valid statute defining a misdemeanor, then the instruction would have been proper. A police officer is permitted to arrest, without a warrant, for misdemeanors committed in his*

presence. . . . The rule followed in Mississippi, which may be the minority rule but which is controlling here, is that a public officer is not charged with the duty of determining at his peril whether a statute is valid when he is acting under it. *Golden v. Thompson*, 194 Miss. 241, 11 So. 2d 206. Thus the challenged instruction was not improper when given . . . the *conduct of the appellees* would be tested by the situation existing at the time of their action."<sup>3</sup> (R. 452)

The Fifth Circuit Court of Appeals was correct in the above holding that probable cause could be a defense of the police officers when acting under *Section 2087.5*.

There was no question but that Petitioners were congregating in a public place. There was no dispute but that they failed to move on on order of the officers. There was sufficient evidence to support a jury finding that there was reasonable ground for the officers to believe that such a congregation of the fifteen Episcopal preachers was with intent to provoke a breach of the peace and was also under such circumstances that actual violence might be occasioned thereby. There was no question but that the offense was committed in the presence of the arresting officers. The arrests under such circumstances brought them within the terms of *Section 2087.5*.

True, the arrests were made without a warrant. However, *Section 2467* of the *Mississippi Code* provides that an

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<sup>3</sup> The Court therefore did not hold that there was no liability on the part of the officers for common-law false arrest as a matter of law or direct a verdict for the policemen on these grounds. This issue would be still before the jury if the case is remanded for a new trial. Nor did the Court, as evidently believed by Petitioners, dismiss the complaint as to this count on the ground of lack of jurisdiction. We therefore do not know why Petitioners argue that the Court had jurisdiction under diversity if for no other reason. (The Petitioners' Point IV in their brief, page 33) This is admitted.

arrest for any crime or offense may be made by a policeman of any city. Section 2469 provides that "arrests for criminal offenses, and to prevent a breach of the peace, or the commission of a crime, may be made at any time or place." Section 2470 of the *Code* provides: "An officer or private person may arrest any person without warrant for an indictable offense committed, or a breach of the peace threatened or attempted in his presence."

Section 2474 of the *Mississippi Code* provides: "Officers and others who make arrests as authorized, or required by law, shall not be liable on account thereof, civilly or criminally, notwithstanding it may appear that the party arrested was innocent of any offense."

However, we do not place the non-liability of the officers here for false imprisonment solely upon this statute. Probable cause is a common law defense to false imprisonment both in *Mississippi* and generally.

In *Forsythe v. Ivey*, Miss., 139 So. 615, plaintiff was arrested for drunkenness in a public place without a warrant. It later developed that he was not drunk but was suffering from some mental and physical temporary disorder. An action for false imprisonment was brought and resulted in a jury verdict for the plaintiff. The Supreme Court reversed the judgment and entered a judgment there for the officers. The officers had requested and been refused an instruction to the effect that if the jury believed that the plaintiff "in the presence of the arresting defendant officers was walking like he was drunk, talked like he was drunk . . . and conducted himself as to lead a reasonable and prudent person to believe that he was drunk, and that. . . (the officers) acting in a reasonable and prudent manner, did believe the plaintiff was drunk, or was about to commit some breach of the peace. . . then they had a right to arrest the plaintiff and put him in jail, and it will be your duty to

render a verdict for the defendants, even though the jury may further believe that after the arrest of the plaintiff it developed . . . that the plaintiff was at the time suffering from some mental and physical temporary disorder, or ailment, which caused him to . . . conduct himself as to indicate to and lead a reasonable and prudent person to believe that he was drunk, or that some breach of the peace was threatened or attempted." The Supreme Court held the refusal of this instruction error and in reversing the case used the following language:

"Under the law, policemen are required to arrest persons without warrants for misdemeanors committed in their presence. Drunkenness in a public place is a misdemeanor . . . in the case of drunkenness, *policemen must act upon appearances, and the evidence in this case clearly presents a case where the policemen were warranted in believing that the plaintiff was drunk at the time of the arrest.*

• • •

"... We think the defendants were entitled to the instruction first hereinabove set-out. . . ." (Emphasis added.)

Two companion cases involving a misdemeanor, i.e., having intoxicating liquor in the possession of the person arrested, are *Baldwin v. State*, 167 So. 61, and *Copeland v. State*, 30 So.2d 509. In both instances the arrest was made by an officer without warrant on the ground of a misdemeanor committed in his presence although the officer did not know, but could merely infer, that the crime was being committed. The Court in each instance held that if what he saw was sufficient to constitute reasonable grounds to



believe that the crime was being committed, that the arrest was legal. In the *Baldwin v. State Case*, the Court held:

"An officer has the right to arrest without a warrant for the commission of a misdemeanor in his presence. Section 1227, Code of 1930. A misdemeanor is being committed in the presence of an officer when he then and there acquires knowledge thereof through one of his senses . . . 'or inferences properly to be drawn from the testimony of the senses.' . . . These facts . . . justified the officer in drawing the inference, from what he had observed, that the bottle in the paper sack contained whisky." (Emphasis added.)

In the *Copeland v. State Case*, the Court stated:

"... the testimony of the sheriff discloses much more than a mere suspicion on his part that a misdemeanor was being committed in his presence and was competent; and that what he saw and observed was sufficient to entitle him to make the arrest. . . ."

Cases holding that probable cause is also a defense to an action for malicious prosecution include: *King v. Weaver Pants Corp.*, Miss., 127 So. 718; *Powell v. Weiner*, 176 So. 731; *Lenaz v. Conway*, 105 So.2d 762.

As stated, this is not a local rule or an isolated holding of the Mississippi court or peculiar to Mississippi. It is the general rule.

This was the rule in this Court prior to *Erie*. *Seaboard Oil Co. v. Cunningham*, 51 F.2d 321, cert. den. 76 L.ed. 557. In *Director General v. Kastenbaum*, 68 L.ed. 146, 263 U.S. 25, the Court in discussing an action for false imprisonment stated:

"The gist of it is an unlawful detention and, that being shown, the burden is on the defendant to establish

*probable cause for the arrest* . . . Probable cause is a mixed question of law and fact. The Court submits the evidence of it to the jury, with instructions as to what facts will amount to probable cause if proved."

The above case was cited with approval in *Carr v. National Discount*, C.A. 6, 176 F.2d 899, and the Court in applying Michigan law stated:

"One may not be held liable for such arrest unless it was brought about without probable cause . . . The essence of a claim for false imprisonment is that the imprisonment must be false,—that is, without probable cause."

The Illinois law with reference to liability for false imprisonment is stated in *Bucher v. Krause*, C.A. 7, 200 F.2d 576, cert. den. 97 L.ed. 1404. The Court stated:

"Whether the officers were acting *reasonably* when they attempted to place plaintiff under arrest is, under Illinois decisions, one of fact . . . If evidence supporting such a conclusion is present but is controverted or if it will support a contrary inference, then the question must be submitted to the jury."

In *Mueller v. Powell*, C.A. 8, 203 F.2d 797, the Court in discussing the Missouri rule with reference to probable cause justifying an arrest without a warrant stated:

"What would constitute such a reasonable and probable ground of suspicion is incapable of exact definition, beyond saying that the officer must not act arbitrarily, but must exercise his *discretion* in a legal manner, using all reasonable means to prevent mistakes . . . Appellant's guilt or innocence of the crime for which he was arrested and about which he was questioned was and

is not the issue in this case . . . The issue was whether there was factual justification or 'probable cause' for the appellees to suspect that appellant had committed the crime. The trial court found there was."

In *Henry v. United States*, 4 L.ed.2d 134, 361 U.S. 98, this Court, in discussing an arrest without a warrant, stated:

"Evidence required to establish guilt is not necessary . . . Probable cause exists if the facts and circumstances known to the officer warrant a prudent man in believing that the offense has been committed. . . If the officer acts with probable cause, he is protected even though it turns out that the citizen is innocent."

This would be particularly true where the crime itself was such that the officer could not determine with precision the commission thereof. This would be true in the case of drunkenness. See *Goins v. Hudson*, 55 S.W.2d 388. This would certainly be true with reference to a crime the commission of which involves the probability of the occasioning of a later breach of the peace. The question of whether or not a breach of the peace might be occasioned thereby could only be determined by good faith discretion of the trial officer.

In the case of *Wells v. Gaspard*, La., 129 So.2d 245, a misdemeanor for which the arrest was made without a warrant was an ordinance prohibiting persons under 18 years from loitering on streets or in public places. Whether or not the crime was actually being committed could not be determined with exactness by the officers. It later developed that the boy arrested was over 18 and was a boy of good reputation with respectable parents. The Court, in affirming a finding of the fact of the trial court that the police officers had reasonable grounds for believing that the boy

was committing a misdemeanor in their presence and denying right to damages for false imprisonment, stated:

"... A police officer cannot be held for damages, even though subsequently the person arrested be found innocent, if the arrest for a misdemeanor be made when the public officer in good faith has probable cause to believe it is being committed in his presence."

Although Petitioners do not contest this holding of the Court with any force we have included it in this brief at some length because of the statement of Petitioners in their brief that the Mississippi rule is "contrary to most jurisdictions." That, as we have pointed out above, is not correct. This is important not only on this question, but is of great importance on the issue of liability under 42 U.S.C. 1983 which we submit must follow the common law tort liability rule.

## POINT II

**The Court Below Properly Held That 42 U.S.C. 1983 Does Not Abrogate or Destroy the Common Law Doctrine of Judicial Immunity.**

The Fifth Circuit in its opinion in discussing this issue held that Judge Spencer should have been granted a directed verdict at the conclusion of the trial.

At common law a judge has absolute judicial immunity against suits for damages when presiding over a court having jurisdiction. The Court below was correct in holding that 42 U.S.C. 1983 did not destroy the judicial immunity of Respondent Spencer.

No question has been raised as to the general jurisdiction of the court presided over by Respondent Spencer. Petitioners had been arrested for a misdemeanor pursuant to Section 2087.5, Mississippi 1942 Code, a full copy of which



is made Appendix A hereto, and thereunder could have been punished by limited fine and imprisonment in the county jail.

Judge Spencer was the Police Justice and ex officio Justice of the Peace under *Section 3374-103, Mississippi 1942 Code*,<sup>4</sup> by which the City Police Justice is given full power of a justice of the peace in any case arising within the city limits. By Section 1831 a justice of the peace is given general jurisdiction of any crime committed in his district "... whereof the punishment prescribed does not extend beyond a fine and imprisonment in the county jail. ..." Affidavits were immediately filed by the arresting officers with Police Justice Spencer. (For typical affidavit see R. 74).<sup>5</sup>

Bond was available immediately either from the Justice of the Peace (Section 2492) or even before the hearing from the arresting officers (Section 1834). No such bail was requested.

At the trial before Judge Spencer Petitioners were represented by two eminently qualified and capable attorneys. A jury was available and within the rights of Appellee but no jury was requested. (Code Section 1836 and 1839.) Oral evidence was introduced by the prosecution but none of the Appellants testified in their own behalf. The resulting conviction was not only anticipated and anticipatable but patently desired by Petitioners.

The common law immunity of Judge Spencer to civil damages is beyond question. The leading case is *Bradley v. Fisher*, 80 U.S. 335, 20 L.ed. 646, where this Court in 1871,

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Full copies of this and the following sections of the Code are not attached in that Appellants do not raise this issue.

<sup>5</sup> Even if the affidavits had been ineffective, which they were not, jurisdiction of the court would not have been destroyed, but the same were amendable even in the circuit court on appeal. *Henry v. State, Miss.*, 154 So. 2d 289, cert. den. 11 L. ed. 2d 604.

speaking through Mr. Justice Field, used the following language:

"... The plea, as will be seen from our statement of it, not only sets up that the order of which the plaintiff complains was an order of the Criminal Court, but that it was made by the defendant in the lawful exercise and performance of his authority and duty as its presiding justice. . . . If such were the character of the Act, and the jurisdiction of the court, the defendant cannot be subjected to responsibility for it in a civil action, *however erroneous the Act may have been, and however injurious in its consequences it may have proved to the plaintiff.* For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself. Liability to answer to everyone who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful. . . .

...

"Nor can this exemption of the judges from civil liability be affected by the motives with which their judicial acts are performed. . . .

"... If civil actions could be maintained in such cases against the judge, because the losing party should see fit to allege in his complaint that the acts of the judge were done with partiality, or maliciously, or corruptly, the protection essential to judicial independence would be entirely swept away. . . .

"If upon such allegations a judge could be compelled to answer in a civil action for his judicial acts, not only would his office be degraded and his usefulness destroyed, but he would be subjected for his protection to the necessity of preserving a complete record of all the evidence produced before him in every litigated case, and of the authorities cited and arguments presented, in order that he might be able to show to the judge before whom he might be summoned by the losing party—and that judge perhaps one of an inferior jurisdiction—that he had decided as he did with judicial integrity; and the second judge would be subjected to a similar burden, as he in his turn might also be held amenable by the losing party.

...  
 "... A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject-matter. Where there is clearly no jurisdiction over the subject-matter, any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. . . . But, if on the other hand, a judge of a criminal court, invested with general criminal jurisdiction over offenses committed within a certain district, should hold a particular act to be a public offense, which is not by the law made an offense, and proceed to the arrest and trial of a party charged with such act, or should sentence a party convicted to a greater punishment than that authorized by the law upon its proper construction no personal liability to civil action for such acts would attach to the judge, although those acts would be in excess of his jurisdiction, or of the jurisdiction of the court held by him. . . ." (pp. 649, 650, 651)

The convictions in this case in 1861-by Police Justice Spencer can hardly be criticized when in 1964 the Supreme Court of Mississippi affirmed convictions under very similar circumstances and under the same statute. Cf. *Thomas v. State*, 160 So.2d 657.

The Court of Appeals of the Fifth Circuit correctly held that Appellee Spencer should have been granted a directed verdict when the evidence was in. On this issue the opinion of the Court below contains the following language: (R. 447-8)

"The appellee Spencer filed a motion to dismiss the complaint as to him on the ground that his actions were [fol. 659] judicial and he was immune from any civil liability. The motion was deferred for decision until the trial of the case on the merits. No ruling on the motion was made. The judgment for the appellants made the question unimportant, but we think it is appropriate to say that the motion should have been granted. By the leading case of *Bradley v. Fisher*, 13 Wall. 335, 20 L. Ed. 646, the immunity was established of judges of courts of superior or general jurisdiction from liability for damages growing out of the performance of their judicial duties. The doctrine has been extended to the judges of all courts. *Barr v. Matteo*, 360 U.S. 564, 79 S. Ct. 1335, 3 L. Ed. 2d 1434; *Yaselli v. Goff*, 2nd Cir. 1926, 12 F.2d 396, aff. 275 U.S. 503, 48 S. Ct. 155, L. Ed. 395. The rule applies to city magistrates and municipal judges. *Cuiksa v. City of Mansfield*, 6th Cir. 1957, 250 F.2d 700, cert. den. 356 U.S. 937, 78 S. Ct. 779, 2 L. Ed. 2d 813; *Reilly v. United States Fidelity & Guaranty Co.*, 9th Cir. 1926, 15 F. 2d 314; 35 C.J.S. 707, False Imprisonment § 44. Such is the law in Mississippi. *Bell v. McKinney*, 63 Miss. 187. The judicial immunity applies in civil rights actions as



well as at common law. *Norton v. McShane*, 5th Cir. 1964, 332 F. 2d 855, cert. den. 380 U.S. 981, — S. Ct. —, 14 L. Ed 2d 274. If a judicial officer acts in the clear absence of all jurisdiction and authority he incurs liability for a false imprisonment caused by him. 35 C.J.S. 707, False Imprisonment § 44. *The Mississippi statute, Sec. 2087.5, on its face, was sufficient to justify the action taken by Judge Spencer.* The statute had not then been held invalid.\* It was subsequently upheld by the Supreme Court of Mississippi in *Thomas v. State*, 160 So. 2d 657, *Farmer v. State*, 161 So. 2d 159, and *Knight v. State*, 161 So. 2d [fol. 660] 521. We think it cannot be said that there was a clear absence of jurisdiction in the appellee Spencer at the time action was taken by him although, since this cause was argued before us, the statute was held invalid<sup>6</sup> as applied to circumstances such as those in this case. *Thomas v. Mississippi*, 380 U.S. 524, 85 Ct. 1327, 14 L. Ed. 2d 265. See *Boynton v. Virginia*, 364 U.S. 454, 81 S. Ct. 182, 5 L. Ed. 2d 206. A judge should not be put to a correct determination of the validity of a criminal statute at the hazard of being cast in damages for the making of a wrong guess. We think it was proper to defer a ruling on the motion of the appellant Spencer but it should have been granted when the evidence was in."<sup>7</sup> (Emphasis added.)

It is now thoroughly established that judicial immunity applies in civil rights actions as well as at common law and

<sup>6</sup> The statute has never been held invalid on its face. See Appendix B and briefing of this point. Whether it was erroneously and thus unconstitutionally enforced under the circumstances here does not destroy judicial immunity.

<sup>7</sup> Followed by the Fifth Circuit in *Carmack v. Gibson*, 363 F.2d 862 (Adv. Sheets).

that 42 U.S.C. 1983 does not abrogate this common law immunity.

The leading case, although actually dealing with legislative immunity, by virtue of its excellent discussion of the history, purpose and intent of 42 U.S.C. 1983 is *Tenney v. Brandhove*, 95 L.ed. 1019, 341 U.S. 367. This Court there stated:

"Did Congress by the general language of its 1871 statute mean to overturn the tradition of legislative freedom achieved in England by Civil War and carefully preserved in the formation of State and National Governments here? Did it mean to subject legislators to civil liability for acts done within the sphere of legislative activity? Let us assume, merely for the moment, that Congress has constitutional power to limit the freedom of State legislators acting within their traditional sphere. That would be a big assumption. But we would have to make an even rasher assumption to find that Congress thought it had exercised the power. These are difficulties we cannot hurdle. The limits of §§ 1 and 2 of the 1871 statute—now §§ 43 and 47 (3) of Title 8—were not spelled out in debate. We cannot believe that Congress—itsself a staunch advocate of legislative freedom—would impinge on a tradition so well grounded in history and reason by covert inclusion in the general language before us."<sup>8</sup> (p. 1026-27)

"The principle, therefore, which exempts judges of courts of superior or general authority from liability in a civil action for acts done by them in the exercise of their judicial functions, obtains in all countries where there is any well ordered system of jurisprudence. It

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<sup>8</sup> The immunity of the judiciary is equally well founded in the common law. *Bradley v. Fisher*, *supra*.

has been the settled doctrine of the English courts for many centuries, and has never been denied, that we are aware of, in the courts of this country."

This case was followed and applied to judicial immunity in *Francis v. Crafts*, C.A. 1, 203 F.2d 809, certiorari denied 98 L.ed. 357. The complaint was filed under Section 1983 against a judge who had allegedly, without notice or hearing, ordered a 17 year old person committed as a defective delinquent. The court in affirming a dismissal of the complaint pointed out that any interpretation of 1983 abrogating judicial immunity even though the defendant acted in good faith in compliance with what he believed to be his official duty and even though the action was not tortious at common law would be "... an awesome and unqualified interpretation". In relying on *Tenney v. Brandhove*, supra, the Court said:

"It is clear that the immunity of judges from civil liability for acts done in the course of their official functions is no less firmly and deeply rooted in the traditions of Anglo-American law, reaching back to ancient times. See the learned opinion by Chief Justice Kent in *Yates v. Lansing*, 1810, 5 Johns., N.Y., 282, tracing the origins of this doctrine of judicial immunity back to the days of Edward III. ... Referring to the doctrine of judicial immunity from civil suit, Chief Justice Kent observed, 5 Johns. at page 291: 'It is to be found in the earliest judicial records, and it has been steadily maintained by an undisturbed current of decisions in the English courts, amidst every change of policy, and through every revolution of their government. A short view of the cases will teach us to admire the wisdom of our forefathers, and to revere a principle on which rests the independence of the administration of justice.' Further he said, 5 Johns. at page 296: 'Ought

such a sacred principle of the common law, as the one we have been considering, to be subverted, without an express declaration to that effect?' . . . ." (p. 811)

The last expression on this subject of a Court of Appeals is *Bauers v. Heisel*, C.A. 3, 361 F.2d 581 (1966) (Adv. sheets). There a county prosecuting attorney in New Jersey had procured the indictment of the plaintiff although he was a minor and although the New Jersey statute excised from the prosecutor's responsibility the prosecution of minors. The Court, in affirming that the complaint for damages under the Civil Rights Act should be dismissed, used the following language:

"Rather than rely on the plethora of cases which have held judicial officers to be immune from suit under the Civil Rights Act, \* we believe that two maxims, one of statutory construction and the other of judicial restraint, when applied and coupled with *Tenney*, clearly indicate that judicial immunity was not abrogated by the Act.

"First, *it is well settled that a statute should not be considered in derogation of the common law unless it expressly so states or the result is imperatively required from the nature of the enactment.* *Mobile Gas Service Corp. v. FPC*, 215 F.2d 883 (C.A. 3, 1954), *aff'd*, *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332, 76 S.Ct. 373, 100 L.Ed. 373 (1956); *American District Telegraph Co. v. Kittleston*, 179 F.2d 946 (C.A.8, 1950); *Scharfeld v. Richardson*, 76 U.S. App. D.C. 378, 133 F.2d 340, 145 A.L.R. 980 (1942). There can be little doubt that the concept of judicial immunity is deeply rooted in Anglo-American law. . . .

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\* To this statement the Court cites some 40 to 50 cases upholding the immunity of judicial officers under Section 1983.



"The statute before us also has no express declaration to that effect; nor does the legislative history adequately support the conclusion that Congress intended to dissolve judicial immunity. . . ." (pp. 586-7)

In the *Bauers v. Heisel* Case, *supra*, the Third Circuit specifically and emphatically overruled its prior decision, before *Tenney*, of *Picking v. Pennsylvania R. R.*, 151 F.2d 240,<sup>10</sup> where it had held that the judicial immunity would not be afforded to a justice of the peace. In so doing, the Court stated:

"We are not alone in our belief that the construction given R.S. § 1979 in *Tenney* sheds new light on the situation which confronted us in *Picking*. Although *Picking* had been the cause of some immediate concern, see Note, 46 Colum.L. Rev. 614 (1946), it was not until after *Tenney* that its pronouncement on immunity became the object of *wholesale disavowal*. In fact, five circuits explicitly stated that *Tenney* had in effect overruled *Picking*. *Stift v. Lynch*, 267 F.2d 237 (C.A.7, 1959); *Cuiksa v. City of Mansfield*, 250 F.2d 700 (C.A.6, 1957), cert. denied, 356 U.S. 78 S. Ct. 779, 2 L.Ed. 2d 813 (1958); *Kenney v. Fox*, 232 F.2d 288 (C.A. 6), cert. denied sub nom. *Kenney v. Killian*, 352 U.S. 855, 77 S.Ct. 84, 1 L.Ed. 66 (1956); *Tate v. Arnold*, 223 F.2d 782 (C.A. 8, 1955); *Morgan v. Sylvester*, 125 F.Supp. 380 (S.D. N.Y., 1954), aff'd, 220 F.2d 758 (C.A. 2), cert. denied, 350 U.S. 867, 76 S.Ct. 112, 100 L.Ed. 768 (1955); *Francis v. Crafts*, 203 F.2d 809 (C.A. 1), cert. denied, 346 U.S. 835, 74 S.Ct. 43, 98 L.Ed. 357 (1953). . . ." (p. 585)

<sup>10</sup> And yet here Petitioners rely almost entirely on this *Picking v. Pennsylvania R. R.* See Petitioners' brief page 24-25. The other cases cited are all before *Tenney* and also deal with the sufficiency of complaints charging the Judge with acting corruptly, viciously and willfully.

An interesting case upholding the immunity of judges and predicting that the Third Circuit would overrule *Picking* is a case from the Sixth Circuit, *Kenney v. Fox*, 232 F.2d 288, certiorari denied 1 L.ed.2d 66, wherein the Court collects a large number of authorities. This same circuit in the later case of *Puett v. City of Detroit, Department of Police*, 323 F.2d 591 (1963), applied the immunity rule to a city judge.

Between *Tenney*, *supra*, and *Bauers*, *supra*, the following cases from practically every circuit have affirmed the judicial immunity under Section 1983: *Byrne v. Kysar*, C.A. 7, 347 F.2d 734; *Morgan v. Sylvester*, 125 F.Supp. 380, affirmed C.A. 2, 220 F.2d 758, cert. den. 100 L.ed. 768; *Rhodes v. Houston*, 202 F. Supp. 624, affirmed C.A. 8, 309 F.2d 959, cert. den. 9 L.ed.2d 719; *Puett v. City of Detroit, Department of Police*, C.A. 6, 323 F.2d 591; *Sarelas v. Sheehan*, C.A. 7, 326 F.2d 490; *Rhodes v. Meyer*, C.A. 8, 334 F.2d 709, cert. den. 13 L.ed.2d 186; *Schben v. Mountain Producers Corporation*, C.A. 3, 170, F.2d 707, cert. den. 93 L.ed. 1095; *Kenney v. Fox*, C.A. 6, 232 F.2d 288, cert. den. 1 L.ed.2d 66; *Spires v. Bottorff*, 223 F.Supp. 441, cert. den. 13 L.ed.2d 349; *Gabbard v. Rose*, C.A. 6, 359 F.2d 182; *Smith v. Dougherty*, C. A. 7, 286 F.2d 777, cert. den. 7 L.ed.2d 97. This list is far from exhaustive.

Petitioners in their brief on this issue (pages 19-26) do little more than attempt to make their own analysis of the legislative history on the lines of *Picking v. Pa. R. Co.*, C.A. 3, 151 F.2d 240, which, as we have pointed out, has been overruled by that circuit and which cases from all the other circuits refuse to follow since *Tenney*, which discussed at great length the legislative history. Also there was no reason why Congress could not have expressly overruled the common law on judicial immunity if that had been the decision of the Congress. Certainly it is well settled that a

statute would not be construed as being in derogation of the common law unless it expressly so states.

What Petitioners seem to be objecting to primarily is the absolute immunity of judicial officers even though they corruptly or viciously or wilfully violated constitutional rights. This absolute immunity does not have to be relied on by Respondent Spencer here. There is no evidence that even indicates that he did not act in good faith and that at the most made an error of law. Petitioners can point to no statement of any witness in this case which would indicate that the acts of Judge Spencer in reaching his decision was corrupt or vicious or fraudulent or wilful or as a result of conspiracy. Petitioners are in grave error in stating that he "convicted the ministers of a crime for which there was no evidence". As we have heretofore pointed out, police officers testified to facts which justified the conviction under 2087.5; none of the Petitioners testified in their own behalf; and the case was tried on an affidavit of the Chief of Police.

A judge cannot be held liable for civil damages for an error of law or an error of fact. If Judge Spencer could be held liable for an error in interpreting the statute or in applying the statute to the acts of Petitioners here, then every justice on the Supreme Court of the State of Mississippi could be held liable to all of the appellants in the three cases where it made a similar error and the justices of this Court and of any court could be held liable to litigants in prior cases if and when they later overruled a prior decision.



## POINT III

**The Court Below Properly Held That There Was No Liability of the Police Officers for Money Damages Under 42 U.S.C. 1983 if the Petitioners Deliberately Planned and Provoked the Arrests for Which the Damages Are Sought.**

Petitioners take the position that they only recognized that they might be arrested. There was, however, strong evidence that they deliberately planned and conspired to provoke the arrests and to be arrested so that they could publicize themselves as "*witnesses of incarceration*".

Even under Petitioners' theory, that they merely acted in such a way that arrests were a possibility, there would be no liability for money damages if the officers acted in good faith with probable and reasonable cause to believe that the acts of Petitioners would actually cause a breach of the peace. Petitioners' position seems to be two-fold: (1) That they have an absolute constitutional right to demonstrate under the First Amendment regardless that thereby law and order could not be maintained and (2) that it therefore followed that they had an absolute right to collect money damages from the arresting officers even if their acts deliberately threatened law and order.

Considering their first position: Petitioners rely on *Cooper v. Aaron*, 358 U.S. 1, 3 L.ed.2d 5, to the effect that a state statute could not require segregation in the schools on the ground that thereby law and order could be maintained. The case does not hold that the right to demonstrate under the First Amendment is limitless and absolute regardless of the breakdown of law and order.<sup>11</sup>

<sup>11</sup> Nor is it in point that a state statute absolutely preventing the alienation of property by the owner thereof was held not justifiable for the purpose of preserving peace under the police power, cf. the other case relied on of *Buchanan v. Warley*, 245 U.S. 60, 62 L. ed. 149. It did not hold that the right to demonstrate is limitless and absolute regardless of the breakdown of law and order.



The position of Petitioners is upon an assumption which runs exactly counter to the holdings of this Court. The rule still recognized by this Court was stated in *Breard v. Alexandria*, 341 U.S. 622, 95 L.ed. 1233, as follows:

"The First and Fourteenth Amendments have never been treated as absolutes. Freedom of speech or press does not mean that one can talk or distribute where, when and how one chooses. Rights other than those of the advocates are involved. By adjustment of rights, we can have both full liberty of expression and an orderly life."

The non-absolute character of First Amendment rights was recognized in *Roth v. United States*, 354 U.S. 476, 1 L.ed.2d 1498, and in *Konigsberg v. State Bar of California*, 366 U.S. 36, 6 L.ed.2d 105.

This Court, speaking through Mr. Justice Douglas, has in *Terminiello v. Chicago*, 1949, 337 U.S. 1, 4, 69 S.Ct. 894, 895-896, 93 L.Ed. 1131, while extolling freedom of speech as a vital freedom, stated: "That is why freedom of speech, though not absolute, *Chaplinsky v. New Hampshire* (315 U.S. 568), *supra*, pp. 571-572 (62 S.Ct. 766, 86 L.Ed. 1031), is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger\* \* \*."

Other cases from this Court holding that the right to demonstrate and rights of freedom of speech, etc. are subservient to the rights of the state to maintain peace and order include: *Cantwell v. Connecticut*, 310 U.S. 296, 84 L.ed. 1213; *Cox v. New Hampshire*, 312 U.S. 569, 85 L.ed. 1049; *Feiner v. New York*, 340 U.S. 315, 95 L.ed. 295; *Poulos v. New Hampshire*, 97 L.ed. 1105, 345 U.S. 395; *Hughes v. Superior Court*, 339 U.S. 460, 94 L.ed. 985. See also a collection of cases in *Niemotko v. Maryland*, 340 U.S. 268, 95 L.ed. 267.

Therefore, it cannot be said that Petitioners had an absolute right to march as a group into the station even though they thereby caused law and order to be destroyed or broken down. It therefore cannot follow that they have an absolute right for damages under 42 U.S.C. 1983 for such acts. This statute grants no new constitutional rights.

We can assume that Petitioners had a right to perform any legal act, but it is not a legal act to provoke violence. The performance of a legal act would not destroy the rights of police officers acting under the police power of the state to make an arrest if they, in their honest opinion based on probable cause, believed violence was actually threatened.

However, here the Court below and Respondents here are talking about more than mere acts of the ministers deliberately done in spite of their realization that the police might arrest them. We are talking about an actual plan and conspiracy to provoke a threatened breach of the peace and thereby provoke an arrest—a question of fact for the jury in this case.

The court below in its opinion on this point (R. 452-3, 545-5) used the following language:

“The appellant Morris was the executive director of the society which organized and supervised the prayer pilgrimage. The court admitted in evidence, over timely objections, his letters and memoranda used in organizing and planning the pilgrimage. From these exhibits and from the testimony of the appellant Morris it could have been inferred that one of the purposes, perhaps the prime purpose of the pilgrimage was to have at least ten of the group jailed in Jackson. The length of time for remaining in jail was discussed. Arrangements in advance for bail bond and for counsel had been made, or so it could have been found. In one of the communications it was said:

'All in all, I think you can count on becoming familiar with the Jackson jail, or at least a goodly portion of our group can.

Perhaps one of our number spoke for us when he said, "About jail—Here I am, send me. I'm not brave but I'm obedient." "

The evidence would have permitted a finding, not only that being jailed in Jackson was a possibility, but that the participants would go to Jackson for the purpose of procuring their jailing and would so conduct themselves as to assure the achievement of that result. We do not say that this evidence required such a finding; we say that it permitted it. If the appellants' claims can be defeated by a showing of a plan and purpose of being arrested and jailed, then the evidence was properly admitted. We think that such a showing would preclude recovery . . .

*"The question is not whether the appellants could lawfully dramatize their protests against racial inequality by attempting to eat in a wrongfully segregated lunch room in a bus terminal of an interstate passenger carrier. It goes without saying that they might do so. Rather the question is whether, in so doing, can they include in their program a planned arrest and confinement and then successfully rely upon such confinement as the basis for recovery in an action for damages for false imprisonment. Throughout the common law of torts the maxim, volenti non fit injuria, is applicable. It is applicable to false imprisonment.*

35 C.J.S. 712, False Imprisonment § 46 c. one who has invited or consented to arrest and imprisonment should be denied recovery. *Hulberstadt v. Nelson*, 34 Misc.2d.



472, 226 N.Y.S.2d 100; *Greene v. Fankhauser*, 137 App. Div. 124, 121 N.Y.S. 1004; *Stork v. Evert*, 47 Ohio App. 256, 191 N.E. 794. The principles set forth in the recent case of *State v. Moore*, — Miss. —, 174 So.2d 352, show a recognition of the rule as applicable in Mississippi, although under a factual situation different from the case before us. An earlier decision, and one more nearly in point on its facts, is *Williamson v. Wilcox*, 63 Miss. 335, where it was said, 'For a purely private injury one cannot maintain a suit when he has consented to the act which produced the injury.'... Since, as is said in *Monroe v. Pape*, *supra*, 'Section 1979 [42 U.S.C.A. § 1983] should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions.' We think the tort principle of *volenti non fit injuria* applies to the claim asserted for a civil rights violation under 42 U.S.C.A. § 1983 as well as to the common-law cause of action. . . . It therefore follows that there should be a new trial of the civil rights claim against the appellee police officers so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment." (Emphasis added.)

Petitioners in response thereto would have us assume that this rule is limited to the doctrine of assumption of risk in negligence cases and that there is no such thing as assumption of risk where the person is performing a constitutional act. This of course is not correct. The doctrine of assumption of risk applies when a man is performing the perfectly constitutional act of doing his work, while walking down a city street, etc. *However, the principle relied on here is much stronger than the doctrine of assumption of risk. It is what is called an "inherent defense" to the tort here sued on.*



This is an action for a tort, i.e., false arrest. *Certain torts, including false imprisonment, exist only where no consent was given.* In other words, consent is not merely a defense, but the absence of consent is an inherent and integral part of the tort to be proved by plaintiff before commission of the tort can be proved.

See the statement of the rule in *Prosser on Torts*, 2d Ed., Chapter 4, Section 18, p. 82-3, as follows:

"The consent of the person damaged will ordinarily avoid liability for intentional interference with person or property. *It is not, strictly speaking, a privilege, or even a defense, but goes to negative the existence of any tort in the first instance.* It is a fundamental principle of the common law that *volenti non fit injuria*—to one who consents no wrong is done. . . . As to intentional invasions of the plaintiff's interests, his consent negatives the wrongful element of the defendant's act, and prevents the existence of a tort. 'The absence of lawful consent,' said Mr. Justice Holmes, 'is part of the definition of an assault.' The same is true of false imprisonment, conversion, and trespass."

For instance, in the law of assault: "The absence of lawful consent," said Judge Holmes, "is a part of the definition of assault." *Ford v. Ford*, Mass., 10 N.E. 474. It is also a part of the definition of trespass. It is also part of the definition of rape. Above all, it is part of the definition of false imprisonment.

The rule is announced in 35 *C.J.S.*, False Imprisonment, p. 712, as follows:

"Where a person is instrumental in causing or provoking his own arrest or detention, no liability attaches, as where a warrant, alleged to be illegal, was placed in the hands of an officer at the request of the person against whom it was issued. So one cannot

maintain an action for false imprisonment who by his own conduct or statements induces his arrest under a process not naming him correctly or which is not intended to describe him."

In *Hulberstadt v. Nelson*, 226 N.Y.S.2d 100, the Court held:

"... Plaintiff invited the arrest, and he should be denied recovery on that ground alone", citing *Prosser on Torts*, *supra*.

Petitioners were clearly acting under the doctrine of "civil disobedience." This doctrine was expounded by Thoreau and of course by Gandhi. Laws which a man considers unjust or laws which violate a man's conscience may have the force of the state behind them but under the doctrine of "civil disobedience" a man is called upon to break them. This is the doctrine espoused by Rev. Martin Luther King. However, Petitioners have overlooked part of this doctrine of civil disobedience. If a man in his own conscience feels that he is called upon to break laws, there goes with this theory the fact that he must "submit gladly to the consequences of breaking them."

There is no question but that Petitioners could, to paraphrase the court below, dramatize their protest against racial inequality by going in an integrated group into a bus terminal so long as they did not cause violence, i.e., they could become "witnesses" against racial inequality so long as they did not cause a breakdown of law and order. However, a different proposition arises where they thereby deliberately seek to become "witnesses of incarceration". Perhaps they have a right to do so if they accept the consequences. *A different question is presented when they seek to profit financially therefrom and recover money damages for so doing.*

## POINT IV

**42 U.S.C. 1983 Does Not Abrogate and Completely Destroy the Limited Immunity or Privilege of Police Officers Acting in Good Faith on Probable Cause. Therefore the Court Below Erred in Holding That There Was Not a Jury Issue as to Whether or Not the Police Officers Acted on Probable Cause in Making the Arrests so as to Absolve Them From Liability for Money Damages Under 42 U.S.C. 1983.**

Since Tenney all Circuit Courts of Appeal, except the Fifth Circuit in this case, have held that *42 U.S.C. 1983* does not abrogate the common law limited or partial immunity or privilege of police officers. Most of these decisions are since *Monroe v. Pape*, ante.

These various Courts of Appeal base their decision upon one of three different reasons or occasionally commingle the reasons. The holdings can be and are justified upon the basis of either of the following grounds:

*(a) The reasoning back of the rule that 42 U.S.C. 1983 does not abrogate the absolute immunity of judges applies with equal force to the common law partial or limited immunity or privilege of police officers.*

The limited or partial immunity or privilege of a police officer is equally as well established as a common law<sup>12</sup> rule as the total or absolute immunity of a judge. See Point I, supra. Particularly see *Barr v. Matteo*, 360 U.S. 564, 3 L.Ed. 2d 1434, ante. Tenney construed the 1871 statute as not obliterating the common-law privilege or immunity of legislators. The other cases heretofore cited, Point II, have held it did not destroy the common-law rule

<sup>12</sup>It is not "a local rule of immunity unassociated with a generally recognized common-law immunity" which the Court said in *Cohen v. Norris*, 300 F.2d 24, could not stand as a defense in a Civil Rights Act case.

of immunity of judicial officers. There is no reason why it should be interpreted any differently as to police officers, i.e., it should not be construed as totally destroying the common-law partial or limited immunity of police officers.

(b) *Relief under 42 U.S.C. 1983 is limited to a denial by police officers of due process of law or equal protection of the law.*

Some authorities hold that 42 U.S.C. 1983 only applies where the officers have deprived plaintiff of due process. *Bottone v. Lindsley*, C.A. 10, 170 F.2d 705, cert. den. 93 L.ed. 1101. Other cases hold the deprivation by the officers of either due process or equal protection of the laws are within the act. *Moss v. Hornig*, C.A. 2, 314 F.2d 89, and cases cited. However, all cases agree that acts of the officers are not within the statute unless there has been either a denial of due process or such discrimination as would deny equal protection of the laws under the Fourteenth Amendment, i.e., the statute does not permit recovery to protect other constitutional rights such as rights under the First Amendment.

There is not involved here any denial by the police officers of either due process or equal protection of the law. An arrest without a warrant and without probable cause is a denial of due process, but an arrest without a warrant with probable cause for a misdemeanor is not a denial of due process. Nor is there any suggestion here of any denial by these police officers of Petitioners of the equal protection of the law, i.e., there is no proof that Section 2087.5 of the Code was discriminatorily enforced by the City police. The type of proof necessary to establish such denial of equal protection of the law by police officers is well known. See *Snowden v. Hughes*, 88 L.ed. 497, 321 U.S. 1; *Moss v. Hornig*,



214 F.Supp. 324; *Wright v. Rockefeller*, 376 U.S. 52, 11 L.ed. 2d 512. Cf. *Oyler v. Boles*, 368 U.S. 448, 7 L.ed. 2d 446.

This limitation of the applicability of 1983 arises from the language thereof requiring that the plaintiff be subjected to a "deprivation of any rights, privileges, or immunities secured by the Constitution and laws" \* \* \*. For the historical background of the holding that rights, privileges and immunities of the Constitution only refer to the due process and equal protection provisions of the Fourteenth and Fifteenth Amendments, see the *Slaughter House Cases*, 16 Wall. 36, 21 L.ed. 394; *Browner v. Irvin*, 169 F. 964; *Wadlergh v. New Hall*, 136 F. 941.

(c) *Probable defense and good faith being a common-law defense for police officers, 42 U.S.C. 1983 will not be construed as abrogating the common-law rule.*

Not only is this rule applied in interpreting 42 U.S.C. 1983, but it is a general rule of construction that no statute will be construed as altering the common-law further than its words import or as making any innovation upon the common-law which it does not clearly and fairly express. *Heard & Company v. Krawill Machinery*, 3 L.ed.2d 820, 359, U.S. 297, citing *Shaw v. Railroad*, 101 U.S. 557, 25 L.ed. 892, and *Texas, etc. Co. v. Abilene Cotton Oil*, 204 U.S. 426, 51 L.ed. 1075. Cf. *Pae v. Stevens*, C.A. 9, 256 F.2d 208; *Globe v. Rutgers Fire Ins. Co. v. Draper*, C.A. 9, 66 F.2d 985; *Brotherhood of R. and S. Cl., etc. v. Norfolk So. Ry. Co.*, C.A. 4, 143 F.2d 1015.

Prior to a discussion of actual cases holding that 42 U.S.C. 1983 does not totally abrogate the common-law partial immunity of police officers, we call the attention of the Court to a case which discusses the common law immunity of

<sup>13</sup> There is no question here of any deprivation of Petitioners of any rights under any Federal law in force at that time.

lesser public officials and the public policy which justifies such immunity:

The reason requiring such a qualified privilege or immunity is ably stated by this Court in *Barr v. Matteo*, 360 U.S. 564, 3 L.ed. 2d 1434. That case involved an action for libel and slander against a director of the Office of Rent Stabilization.<sup>14</sup> The Court quoted with approval the language of Judge Hand in *Gregoire v. Biddle*, C.A. 2, 177 F.2d 579, involving an action for common-law false arrest against arresting officers. The Court in the opinion, speaking through Mr. Justice Harlan, used the following language:

"The reasons for the recognition of the privilege have been often stated. It has been thought important that officials of government should be free to exercise their duties unembarrassed by the fear of damage suits in respect of acts done in the course of those duties—suits which would consume time and energies which would otherwise be devoted to governmental service and the threat of which might appreciably inhibit the fearless, vigorous, and effective administration of policies of government. The matter has been admirably expressed by Judge Learned Hand:

"... it is impossible to know whether the claim is well founded until the case has been tried, and that to submit all officials, the innocent as well as the guilty, to the burden of a trial and to the inevitable danger of its outcome, would dampen the ardor of all but the most resolute, or the most irresponsible, in the unflinching discharge of their duties. Again and again

<sup>14</sup> Although the case involved a suit of defamation, the opinion clearly points out that the rules of law expressed therein apply to civil tort suits generally. The opinion has been so construed in subsequent cases. See *Bershad v. Wood*, C.A. 9, 290 F.2d 714; *Norton v. McShane*, C.A. 5, 332 F.2d 855 at 858, n. 3.

the public interest calls for action which may turn out to be founded on a mistake, in the face of which an official may later find himself hard put to it to satisfy a jury of his good faith. There must indeed be means of punishing public officers who have been truant to their duties; but that is quite another matter from exposing such as have been honestly mistaken to suit by anyone who has suffered from their errors. As is so often the case, the answer must be found in a balance between the evils inevitable in either alternative \* \* \* .<sup>15</sup>

Also before calling the attention of the Court to cases specifically dealing with the partial immunity of police officers, we call the attention of the Court to the inapplicability of *Monroe v. Pape*, 5 L.ed.2d 492, 365 U.S. 167, which the Fifth Circuit completely misunderstood. That was a case where the police officers without any statutory authority made an unlawful search and seizure without a warrant, not accompanied by an arrest. We have no fault to find therewith. Acting in direct conflict with state statutes the policemen there invaded the home of the plaintiffs and made a search and seizure without a warrant and they then merely later arrested and detained the plaintiff without a warrant. Under the allegations of the complaint<sup>15</sup> there was no possible justification for or defense for the acts of the police. There was alleged, as the Court pointed out, a clear "misuse" of the power of the officer.

Moreover, *Monroe v. Pape* makes it clear that the liability under the statute would follow the common-law rule of liability of officers. The *Monroe v. Pape* opinion on this point concludes with the language: "Section 1979 should be read against the background of tort liability that makes a man responsible for the natural consequences of his action."<sup>16</sup>

<sup>15</sup> The complaint had been discussed without trial by the Court of Appeals. 272 F.2d 365.



That is all we are asking here, i.e., that the liability be read only against the background of common-law tort liability of a police officer for false arrest.

The Court below correctly held that immunity was not discussed in the *Monroe v. Pape* Case. However, it overlooked that it was not involved in that case whatsoever. That was a search and seizure case.

Probable cause is not a ground for immunity for police officers for illegal search and seizure. This lack of probable cause as a partial immunity for an illegal search and seizure is discussed in *Cohen v. Norris*, C.A. 9, 300 F.2d 24, where the Court stated:

"Since it is alleged, with respect to this first overt act, that appellees did not have a search warrant, it follows that the search was unreasonable unless it was made incident to a valid arrest, or was made under exceptional circumstances which dispense with the need of a search warrant \* \* \*"

In a note to the above decision in *Cohen v. Norris*, supra, there appears the following language:

"... a search not incident to a lawful arrest must rest on a search warrant, probable cause to obtain such a warrant being insufficient. *Chapman v. United States*, 355 U.S. 610, 615, 81 S.Ct. 776, 5 L.ed.2d 828; *Johnson v. United States*, 333 U.S. 10, 13-15, 68 S.Ct. 367, 92 L.ed. 436."

As stated, *Monroe v. Pape* was on appeal from a dismissal of the complaint without trial. Upon reversal the case was remanded and tried resulting in a jury verdict for the plaintiff against the police officers. On motion of the police officers for judgment notwithstanding the verdict the court held that it could not be granted and pointed out the difference between the defense of probable cause and an arrest



on probable cause in a case involving searches and seizures. The court in so holding stated:

“ ‘The law relating to search and seizure is more restricted than the law relating to arrest. This is because the Constitution of the United States and the Constitution of the State of Illinois expressly provide limitations upon invasions of the privacy of the individual and his home and personal effects.

“ ‘Although there may be an arrest without a warrant, upon probable cause, under the laws of Illinois, though the law may be different in other states, there may not be a search of a home without a warrant.  
 \* \* \* ’ ’ (221 F.Supp. at 647)

Cf. *McMahan v. Draffen*, Ky., 47 S.W.2d 716.

See also *Chapman v. United States*, 5 L.ed.2d 828, 365 U.S. 610, and *Johnson v. United States*, 333 U.S. 10, 92 L.ed. 436, holding that, except for a search made at the time of and after, a lawful arrest must rest on a search warrant, probable cause to obtain such a warrant being insufficient.

Therefore, in *Monree v. Pape* there was not involved the issue here of partial immunity for an arrest if good faith and probable cause is shown.

Nor did the officers here, if the jury find on competent evidence that the officers acted in good faith on probable cause, “misuse” their power. They were not under such circumstances wrongdoers in any normal sense of the word.

Turning now to the various holdings of various circuits in actions under 42 U.S.C. 1983 that are directly in point:

From the *First Circuit Court of Appeals* we call the attention of the Court to:

In *Cobb v. City of Malden*, 202 F.2d 701, the Court held that the statute did not destroy a qualified privilege of mem-

bers of the City Council and other public officers for acts done by them *"in good faith in performance of their official duty as they understood it"*. The Court in so holding used the following language:

"This is not the first time that a court has been perplexed by the apparently sweeping and unqualified language of the old Civil Rights Act. 8 U.S.C.A. §43 seems to say that every person in official position, whether executive, legislative, or judicial, who under color of state law subjects or causes to be subjected any person to the deprivation of any rights secured by the Constitution of the United States, shall be liable in damages to the person injured. The enactment in terms contains no recognition of possible defenses, by way of privilege, even where the defendants may have acted in good faith, in compliance with what they believed to be their official duty. Reading the language of the Act in its broadest sweep, it would seem to make no difference that the conduct of the defendants might not have been tortious at common law; for the Act, if read literally, creates a new federal tort, where all that has to be proved is that the defendants as a result of their conduct under color of state law have in fact caused harm to the plaintiff by depriving him of rights, etc., secured by the Constitution of the United States.

"Fortunately, *Tenney v. Brandhove*, 1951, 341 U.S. 367, 71 S.Ct. 783, 95 L.Ed. 1019, has relieved us of the necessity of giving the Civil Rights Act *such an awesome and unqualified interpretation*. . . .

"So far as concerns federal tort liability for acts done under color of state law, I think the Supreme Court in effect has held, in *Tenney v. Brandhove*, that the Act merely expresses a *prima facie* liability, leaving to the courts to work out, from case to case, the

defenses by way of official privilege which might be appropriate to the particular case.

"... Hence I take it as roughly accurate generalization that members of a city council, and other public officers not in the exceptional category of officers having complete immunity, would have a qualified privilege, giving them a defense against civil liability, for harms caused by acts done by them in good faith in performance of their official duty as they understood it. \* \* \*"  
(Emphasis added.)

In *Joyce v. Ferrazzi*, 323 F.2d 931 (1963), the Court, in affirming a dismissal of a complaint for damages under the statute against police officers, stated:

"... the plaintiff has failed to make out a case of deprivation of any federally secured right, privilege or immunity. For all that appears the police responded to a call for help from the plaintiff's wife and when she admitted them to the plaintiff's house, observing the plaintiff's conduct to be irrational, even violent, took him into custody using no more force than circumstances warranted. It does not appear that the police made any mistake. But if they did, not every police error of law or fact arises to the dignity of a deprivation of a federally secured right, privilege or immunity. *Agnew v. City of Compton*, 239 F.2d 226, 230, 231 (C.A. 9, 1957), cert. denied, 353 U.S. 959, 77 S.Ct. 868, 1 L.ed. 2d 910 (1957)." (Emphasis added.)

From the *Tenth Circuit* see:

In *Marland v. Heyse*, 315 F.2d 312 (1963), plaintiff had been arrested by police officers on three different occasions without a warrant, and on each arrest he was held for hours and subjected to extensive questioning. No charges were

ever filed against him. Allegedly at times the questioning was accompanied by verbal abuse and threats and allegedly on two occasions his request to use a telephone to call an attorney or his mother was denied. The Court held:

"... A jury question was presented as to whether the conduct of the police officers on the different occasions was so arbitrary, unreasonable *and without probable cause* as to subject the plaintiff to a deprivation of rights guaranteed by the Constitution of the United States."

In *Downie v. Powers*, 193 F.2d 760, an action for damages was brought on exactly the opposite ground, i.e., that the police of the city deprived Jehovah's Witnesses holding a religious meeting of protection under the law by not keeping peace and preventing the invasion of constitutional rights by citizens interrupting and trying to break up the meeting. The Court held that whether the police officers should have realized that a breach of the peace was reasonably apprehended and protected the Jehovah's Witnesses was a question for the jury, using the following language:

"When all the evidence bearing upon the action or inaction of the city officials is considered in its totality we think it presented a factual issue of whether they exercised reasonable diligence in the performance of their statutory duties, or whether they abdicated to the mob. The issue was submitted to the jury under proper instructions and their findings have binding effect here, even though as triers of the fact we might have concluded otherwise."<sup>16</sup>

<sup>16</sup> See also on liability of police officers for failure to protect a negro man and his apparently white wife from violence of others *Bullock v.*



From the *Ninth Circuit* Court of Appeals we call the attention of the Court to:

In *Agnew v. City of Compton*, 239 F.2d 226, cert. den. 1 L. ed. 2d 910, 353 U.S. 959, plaintiff was arrested by a police officer without a warrant for violation of a city ordinance forbidding the engaging in business of auctioneering without a permit. As a matter of fact the plaintiff was arrested while auctioning his own goods in his own store "as an isolated transaction". The charges were dropped against him. The Court, in denying the right to damages under the Civil Rights Act, held:

" . . . it would appear that, at most, appellant's arrest was wrongful because the arresting officers misunderstood the ordinance. This would not amount to a deprivation of basic civil rights. *No one has a constitutional right to be free from a law officer's honest misunderstanding of the law or facts in making an arrest.*" <sup>17</sup> (Emphasis added.)

In *Beauregard v. Wingard*, 362 F.2d 901, the plaintiff was arrested on bookmaking charges. The plaintiff alleged that he was so arrested because of certain political attacks made by plaintiff on the arresting officer and that his civil rights were violated. The jury brought in a verdict of probable cause for the arrest. The Court, in holding that the plaintiff could not recover under 42 U.S.C. 1983 even

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*Tamiami Trail Tours, Inc.*, C.A. 5, 266 F.2d 326. Here the police were using their best judgment and best effort to protect Petitioners from anticipated violence being wilfully provoked by them.

<sup>17</sup> This holding was not repudiated in the later case of *Cohen v. Norris*, C.A. 9, 300 F.2d 24. That was a search and seizure case and the Court merely corrected one statement that it had made in the opinion in *Agnew* to the effect that under the Civil Rights Act it was necessary, that the act be wilful. This correction was made in view of the *Monroe v. Pape* holding. On the other hand, since *Cohen v. Norris* the 9th Circuit has again affirmed the primary holding of *Agnew*. *Beauregard v. Wingard*, ante.

though his innocence was subsequently established in the criminal case, used the following language:

"Although the circumstances under which an arrest without probable cause gives rise to a claim under the Civil Rights Act may not yet be clearly established, see, e. g., Note; The Civil Rights Act of 1871: Continuing Vitality, 40 Notre Dame Law., 70, 80-84. (1964), it should in any event be clear that *where probable cause does exist civil rights are not violated by an arrest* even though innocence may subsequently be established."

From the *Seventh Circuit* Court of Appeals we call the attention of the Court to:

*Jennings v. Nester*, 217 F.2d 153. A conviction at the first criminal trial was reversed and at the second trial plaintiff was accorded all constitutional guarantees. The Court dismissed the complaint against local police officers holding that there was no denial of equal protection of the law, stating "Although it alleges improper acts on the part of the defendants, there is nothing to indicate that every citizen of Illinois is not potentially subject to the same treatment." In dismissing the complaint as against the police officers the Court, in holding that there was no cause of action under 42 U.S.C. 1983, also held: "In determining whether or not plaintiff's constitutional rights have been deprived, we must look at everything that transpired. It is obvious from the complaint that as he stands today, *the plaintiff has been accorded due process* as required by the Fourteenth Amendment."

In *Smith v. Dougherty*, 286 F.2d 777, cert. den. 7 L.ed. 2d 97, an action was brought under 42 U.S.C. 1983 against a judge and a sheriff and Chicago police officers charging them with depriving plaintiffs of their constitutional and

civil rights in connection with an allegedly unconstitutional extradition to stand trial in Michigan on a charge of robbery. The Court, in dismissing the complaint, used the following language:

"It appears to us that this case is governed by our holdings in *Stift v. Lynch*, 7 Cir., 1959, 267 F.2d 237; *Cawley v. Warren*, 7 Cir., 1954, 216 F.2d 74; and *Truitt v. State of Illinois*, 7 Cir., 1960, 278 F.2d 819; and cases cited therein.

"... This Court further held, that no action under the civil rights statutes lay against the Sheriff as no purposeful and systematic discrimination against a class of persons (of which plaintiffs were members) had been shown. Nether has any been shown in the case before us.

"In *Jennings v. Nester*, 7 Cir., 1954, 217 F.2d 153 which involved police officers, we pointed out that the Federal civil rights statutes were not enacted to discipline local law-enforcement officials."

*From the Eighth Circuit:*

In *Mueller v. Powell*, 203 F.2d 797, the Court held that if the arrest was made by the officers in such a way that it was lawful under state law if it was made on probable cause then there was no liability under the Civil Rights Act for deprivation of due process of law and if also the procedure prescribed by the state afford the character of due process contemplated by the Federal Constitution. The Missouri law was to the effect that an officer was justified in making an arrest without a warrant, for a supposed murder, although no felony had actually been committed, but is suspected, "and there is reasonable or probable grounds to suspect that the person arrested committed the crime". The Court pointed out "since . . . the Missouri procedure,

if followed, is synonymous with due process under federal law, we may use as the test of lawfulness of appellant's arrest the requirements for a lawful arrest under the state law."

The trial court had found that there was probable cause which was binding in the federal court action. The Court therefore held "If the procedure prescribed by the state actually affords the character of due process contemplated by the federal Constitution, and is followed, there is no denial of the right under the federal Constitution..."

"Appellant's guilt or innocence of the crime for which he was arrested and about which he was questioned was and is not the issue in this case. The trial court expressed no opinion on that question. We, of course, express none. The issue was whether there was factual justification or 'probable cause' for the appellees to suspect that appellant had committed the crime. The trial court found there was..."

In *Pritchard v. Downey*, 326 F.2d 323, there was an arrest of civil rights demonstrators. The Court affirmed the district judge in denying any civil liability under 42 U.S.C. 1983, stating: "Judge Young in his opinion has very satisfactorily demonstrated that substantial evidence supports his finding that probable cause existed for the arrest of each of the plaintiffs... An arrest is justified if probable cause exists therefor. *The burden of proving probable cause for arrest is considerably lighter than that involved in sustaining a conviction.*" The Court then pointed out that there was no denial of equal protection or due process stating: "The record shows that a large number of persons other than plaintiffs were arrested on this day. All were processed as rapidly as possible."



**From the Sixth Circuit:**

In *Hurlburt v. Graham*, 323 F.2d 723, a complaint for damages against police officers was dismissed and the dismissal affirmed, the Court stating:

"The police officers did not become liable under the Civil Rights Act merely because they investigated the accident, served a ticket on the plaintiff which required him to appear before the justice and testified in the case. The officers were not responsible for what subsequently took place in the trial of the case. *Cuiksa v. City of Mansfield*, supra. Nor do we think that giving a false version of the accident (which plaintiff claims the officers and other defendants did) would bring the case under the Civil Rights Act. If the rule were otherwise, any disgruntled litigant who lost his case in the state court could get a retrial in the federal court by alleging that his opponent gave a false account of the controversy."

In *Gabbard v. Rose*, 359 F.2d 182 (1966), the Court followed *Agnew v. City of Compton*, 239 F.2d 226, supra, in its holding that "No one has a constitutional right to be free from a law officer's honest misunderstanding of law or facts in making arrest."

**From the District Court in Illinois:**

In *Bowens v. Knazee*, 237 F.Supp. 826 (1965), the Court followed the holding of *Monroe v. Pape* that liability under 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." Under this rule the Court held that such defenses as self-defense or "unforeseeability" of deprivation of civil rights protected the officer acting in good faith. The Court also held that an officer must be

judged by the decisions of the courts at the time of the incident complained of:

"In order for the Civil Rights Act to apply, the acts complained of must result in a deprivation of rights secured by the Constitution. *Under the general principles of tort liability, it is sufficient that a reasonable man would have foreseen this result.* However, a subsequent determination that the officer's conduct resulted in a deprivation of constitutional rights does not mean that the result was foreseeable and that the officer's conduct was therefore tortious.

"The Civil Rights Act created a new type of tort: the invasion, under color of law, of a citizen's constitutional rights. The test of tortious conduct in an ordinary tort case is, as a general rule, whether at the time of the incident the defendant was negligent, whether he failed to act as a reasonably prudent man. . . .

"In ordinary tort litigation, we allow a jury to find that a defendant committed a tort when, looking back to the event, it finds that the defendant acted unreasonably. . . .

"The tort created by the Civil Rights Act . . . is determined by the courts. If that standard has not yet been enunciated by a court in a manner which makes its applicability to the incident at hand clear, the potential defendant cannot be expected to conform his conduct to it. *Unlike the requirements of a statute or the judgment of the community which can be applied retroactively, the retroactive application of the judgment of a court as to the requirements of the Constitution—based not on community standards but on legal reasoning—would place a defendant in an impossible position.*

"It would require law enforcement officers to respond

*in damages every time they miscalculated in regard to what a court of last resort would determine constituted an invasion of constitutional rights, even where, as here, a trial judge—more learned in the law than a police officer—held that no such violation occurred.*

• • •

*“The applicability of the Civil Rights Act to the facts of this case must be determined with reference to the standards of constitutional protection current at the moment the defendant acted. . . .*

*“So long as the defendant’s conduct stemmed from his reasonable belief as to the requirements of the law and was not unreasonable in any other way, he cannot be held responsible—under the standard of liability set forth in Monroe v. Pape—for the deprivation of plaintiff’s rights. ‘No one has a constitutional right to be free from a law officer’s honest misunderstanding of the law or facts in making an arrest’. Agnew v. City of Compton, 239 F.2d 226, 231 (9 Cir. 1956), cert. den. 353 U.S. 959, 77 S.Ct. 868, 1 L.Ed.2d 910 (1957). Thus, the action of a police officer cannot be tortious when the officer proceeds on the basis of his reasonable, good faith understanding of the law and does not act with unreasonable violence or subject the citizen to unusual indignity. . . .”*

We now turn to the unconvincing and illogical method by which the Fifth Circuit Court of Appeals arrived at its flat conclusion that “the defense of immunity is not available to the police officer appellees in this case”. (R. 450)

In our opinion the Court erred in this respect by confusing absolute immunity with partial or limited immunity and was merely holding, or, if it had been called to its

attention, would have merely held that there was no absolute immunity if the acts were not done in good faith with probable cause but were malicious or wilful acts.

We say this because the Court first attempted to base its decision on its own decision in *Norton v. McShane*, C.A. 5, 332 F.2d 855, cert. den. 14 L.ed.2d 274. In that case an action under 42 U.S.C. 1983 and under the common law had been brought against certain federal officers charging them with unlawful arrest without probable cause, abuse while being detained, horrible and nauseating mistreatment and malicious assault and battery, together with a conspiracy to deprive plaintiffs of equal protection of the law. "The plaintiffs apparently are seeking relief under both common law and the Civil Rights Acts. . . ." As to the common law cause of action, the Fifth Circuit sustained the district court in dismissing the complaint coming to the conclusion that "by the great weight of authority, law enforcement officers are immune from civil suits (even) based on alleged malicious acts." In taking up the cause of action under the Civil Rights Act the court only actually held that it was not applicable, as it clearly is not, to federal officers. It did not pass on any limited or partial immunity of state officials under Section 1983. Any remark made in the opinion thereasto is pure dicta.

The Fifth Circuit in the present case, after discussing this common law rule of absolute immunity of police officers, which Respondents are not even attempting to rely on here, then said: (R. 449)

"The rule *may* be otherwise where a claim is asserted under a Civil Rights Act. In *Norton v. McShane*, supra, it was said: 'While it is clear that the common-law immunity afforded legislative and judicial officers applies in suits under the Civil Rights



Acts, there remains much *uncertainty*<sup>18</sup> as to the *extent* to which immunity for subordinate executive officials applies, if it applies at all' . . . ."

In this case now before the Court, the court below did not quote the additional language in *McShane*:

"In view of our conclusion later in this opinion that the instant suits are not within the purview of the Civil Rights Acts (because against federal officers) we do not decide at this time *the scope* of official immunity under those statutes. We need only say that the doctrine *may* be given more limited application in those suits than it has been given at common law." (dicta)

Thus, *McShane* did not hold that there was no immunity whatsoever for police officers under the Civil Rights Act and cannot be interpreted as so holding, but merely as expressing some doubt as to the extent thereof. As heretofore pointed out, Respondents here are not seeking to be allowed to establish proof that would justify absolute immunity but merely limited and partial immunity if probable cause is proved.

The court below in its opinion then proceeded to state (R.449): "The uncertainty (as to the scope of the immunity under the Civil Rights Act) then existing (referring to the time of the decision in *McShane*) still prevails. 15 Am.Jur.2d 452, et seq., Civil Rights, Section 67."

This text is pitifully inadequate and reflects no such uncertainty. It only cites two cases dealing with the liability under the Civil Rights Act of law enforcement officers, both of which held them not liable. The text also recognized

<sup>18</sup> No authority was cited in *McShane* for this statement.

there could be a distinction between absolute immunity and limited immunity, citing *Nelson v. Knox*, C.A. 6, 256 F.2d 312, to the effect that the mayor, city manager and commissioners did not enjoy "complete immunity". It did not point out that the *Nelson v. Knox* case did hold that these officers had "a qualified privilege, giving them a defense against civil liability for harm caused by acts done by them in good faith in performance of their official duty as they understood it."

Turning to the only other cases upon which the Fifth Circuit based its decision in this case:

The court stated: (R. 449)

"By dictum in *Hoffman v. Halden*, 9th Cir. 1959, 268 F.2d 280, it was indicated that by the Civil Rights Act liability was imposed on state officers for acts within as well as without the scope of their authority if done under color of law."

With this we can cheerfully accede. In fact it is usually required that the act be within the scope of the authority in order to create liability. It was for *Monroe v. Pape* to extend it to acts beyond the authority. The case did not even indicate, much less hold, that acts performed in good faith by an arresting officer on probable cause would justify damages. The *Hoffman* Case merely held that a complaint should not be dismissed where it alleged "The County Health Officer and his deputy wilfully failed to act in good faith in forceably taking plaintiff to a place of detention . . . and that they wilfully refused to advise court that they had ignored order and were detaining plaintiff against his wishes and that they made a false return of citation . . . etc." Naturally the complaint stated a cause of action.

The court below in its opinion (R. 449-50) then cites

*Monroe v. Pape*, supra, to the effect that the act of the officers did not have to be performed wilfully in order to create liability. This again we can cheerfully admit. However, there is a vast difference between any holding that an act not performed wilfully but performed in good faith under a statute valid on its face on probable cause was indefensible.

The inexplicable remark of the court below in the opinion is (R. 450): "Inherent in the Monroe holding is the principle that good faith and reliance upon a state statute subsequently declared invalid are not available as defenses."

We submit that no such holding is inherent in Monroe. How could it be inherent in Monroe when, in Monroe, there was no good faith and there was no reliance upon a state statute but the acts were performed in defiance of state statutes. Nor was there in Monroe any case of immunity or partial immunity involved. This is to some extent admitted by the Fifth Circuit which stated that Monroe "did not expressly rule upon the question of immunity." However, as pointed out, supra, there is no immunity involved in search and seizure cases where the search and seizure is without a warrant and where it is not incident to any arrest. The rejection of such a defense in the search and seizure case does not "... imply(s) rejection of such a defense as a general proposition." In fact the distinction in the search and seizure cases clearly recognizes that it is not like normal arrest cases and the defenses are different.

This, as heretofore pointed out, is borne out by the next case cited by the court below in its opinion (R. 450), *Cohen v. Norris*, C.A. 9, 300 F.2d 24, supra. In that case, another search and seizure case, after the court had held that probable cause for search and seizure was not a defense by one acting without a warrant except under very exceptional circumstances and that probable cause for an arrest was not a defense unless the search and seizure was made incident to

the arrest. The language used by the court below in stating that *Monroe v. Pape* necessarily implies rejection of such a defense as a general proposition is taken bodily from *Cohen v. Norris* where it is talking about only a search and seizure case. The court in holding that in *Tenney* there was no immunity in this type of case very carefully limited to search and seizure cases, stating: "If the language (in *Tenney*) in so ruling may be considered to be broad enough to include the acts of police officers *in making searches and seizures*, it must be regarded as not controlling in view of *Monroe v. Pape*." If this were a search and seizure case, this position would not be taken.

We again call the attention of the Court to the holding in *Chapman v. United States*, 5 L.ed.2d 828, 365 U.S. 610, and *Johnson v. United States*, 333 U.S. 10, 92 L.ed. 436, to the effect that in the absence of very special circumstances a search *not incident to a lawful arrest* must rest on a search warrant, probable cause to obtain such a warrant being insufficient.

The only other case cited by the court below (R. 450) on this issue is again its own decision and again a search and seizure case, *Davis v. Turner*, C.A. 5, 197 F.2d 847. Also, again the court merely held that the complaint stated a cause of action where it alleged that the sheriff entered and searched plaintiff's store without warrant of any kind, found nothing unlawful, but seized and arrested her, struck her and put her in jail and refused to tell her the crime for which she was charged. Naturally, it stated a cause of action. The opinion did not preclude any defenses that could be proved.

The court below therefore cited no authority that substantiated its holding. Petitioners cited none.

We therefore submit that Respondents have a right to have submitted to the jury on a new trial the defense of good faith and probable cause not only to the count on



common law false arrest, but also to the count based on 42 U.S.C. 1983, i.e., establish a partial or limited immunity if they can establish such facts to the satisfaction of the jury.

## POINT V

**The Court Below Was in Error in Holding That the District Court Made Reversible Error in the Admission of Evidence.**

The trial of this case in the district court before a jury resulted in a jury verdict for the Defendants. The cause was reversed by the Fifth Circuit on the ground that the district court made errors in admitting evidence. We submit that the evidence admitted did not constitute reversible error on the part of the District Judge and that this cause should be remanded to the district court and the original judgment therein reinstated.

*There was no error in allowing one witness to be asked whether he personally agreed or disagreed with nine statements allegedly tenets of the Communist Party as set forth in the Daily Worker of May 26, 1928.*

The witness Jones was, on cross-examination, asked questions as to whether he personally agreed or disagreed with certain statements allegedly read to him from the Daily Worker. (R. 105-111) The Court required him to express his agreement or disagreement with the statements read to him. He stated that he did agree with eight of the tenets and had merely not made up his mind as to one. This witness was then further examined with reference thereto by his own attorney. He was given the opportunity to and did testify that he was not a Communist and disagreed with the Communist Party principle of uniting all workers against the master class and that capitalism means racial

oppression and communism means social and racial equality. The court sustained the objection to the introduction into the record of this issue of the Daily Worker. It therefore allowed only the questions of whether the witness agreed or disagreed with the statements read to him. Neither the questions nor his answers thereto prejudiced him in any way, particularly in view of his full opportunity to state that he was not a communist. The pertinency of inquiry as to what extent, if any, demonstrations and riots are instigated by groups infiltrated by Communists has been fully recognized.

In Mississippi wide latitude is permitted in the cross-examination of a witness. In *Jones v. State, Miss.*, 76 So. 2d 201, the Court stated:

"... When a witness voluntarily takes the stand and testifies, he is subject to cross-examination and so long as there is no abuse of the privilege of cross-examination and no prejudice results therefrom except such prejudice as might arise from disclosing the truth, the severity of the cross-examination is no ground for a reversal."

Full and complete cross-examination and great latitude therein is approved by the federal courts. *Gardner v. United States*, C.A. 10, 283 F.2d 580; *Dickson v. United States*, C.A. 10, 182 F.2d 131; *Young Ah Chor v. Dulles*, C.A. 9, 270 F.2d 338; *Fisher v. United States*, C.A. 9, 231 F.2d 99; *Bass v. United States*, C.A. 8, 326 F.2d 884, cert. den. 12 L.ed.2d 176. Bias or prejudice of the witnesses or motives for his acts or reasons for his actions are proper subject of cross-examination. *Asgill v. United States*, C.A. 4, 60 F.2d 776; *United States v. Standard Oil Company*, C.A. 7, 316 F.2d 884.

Moreover, the trial judge has broad discretion in the matter of admission or exclusion of evidence. *National Lab.*

*Bel. Bd. v. Donnelly Garment Co.*, 91 L.ed. 854, 330 U.S. 219; *Chapman & Dewey Lumber Co. v. Hanks*, 106 F.2d 482; *Hannan v. United States*, 131 F.2d 441; *Texas General Indemnity Company v. Daniel*, C.A. 5, 283 F.2d 898.

*There was no error in allowing admission in evidence of the tension caused by the arrival of the Freedom Riders in Jackson approximately a month before the occurrence here.*

The same general principles outlined above are applicable to this issue.

The court below was, we submit, in error in stating that "It is not shown that the earlier incidents (the Freedom Riders) were sufficiently close in point of time to have any relation to the situation with which we are dealing." (R. 450) The issue was the mental attitude of or emotional tension of the citizens of Jackson at the time. If what had occurred a month before was still in the minds of the populace of the city generally and still influenced them, which was testified to by the witnesses, then it could not be remote on this issue.

The court below was also in error in saying that "No connection was shown between the Freedom Riders and the Prayer Pilgrims, and the appellants denied any connection." (R. 450) On the other hand, the record is replete with statements of Petitioners that they were following up the activities of the Freedom Riders and supporting them.

In the Directive written by witness Morris to all of the participants on June 28th he stated: "I am keeping as closely in touch with the situation as I can so that we may be adequately advised what the best course of action is to the extent that our pilgrimage relates to the Freedom Rides ... our pilgrimage will in all likelihood be viewed as another or the last of the Rides." (R. 188-9)

This witness also himself testified: "I have not denied we would consider front line fighters in Mississippi to be the Freedom Riders, which we were supporting although we were not Freedom Riders." (R. 174)

This witness also testified:

"A. It is exactly as said there. The primary purpose of the trip was to indicate concern for segregation in the church, but it also concerned those seeking freedom of travel, and at that particular time in the history of Mississippi I suspect this might have meant the Freedom Riders or it might be anyone.

"Q. Did you have in mind anyone other than Freedom Riders when you wrote that?

"A. Anyone who wished to travel at that time, but we had particularly in mind the Freedom Riders. We make no bones of while we were not Freedom Riders, we support the Freedom Riders. I mean you don't have to pry to get this. I will say this frankly.

...

"Q. To what did you refer in the letter of June the 16th when you said, 'While present difficulties may have been overcome by September, dangers inherent in the early stages of the pilgrimage must be frankly faced'?

"A. As I indicated yesterday, being an interracial group traveling in the South, we know that about half of the population of Mississippi is White and small percentages of these persons would object to an interracial group, and, therefore, there might be cause for tension among some of the White people who would object to the nature of our group.

"Q. In that statement when you use the phrase



“present difficulties may have been overcome,” weren’t you there referring to the Freedom Riders?

“A. I was—.” (R. 168-9)

Thus, Petitioners themselves freely admitted the pertinency of the previous Freedom Riders on the tension in the heart of small segments of the Mississippi population and their connection with this movement.

Moreover, previous racial incidents and animosities were held to be material and relevant in *Knight v. State, Miss.*, 161 So.2d 521, where the Mississippi Supreme Court took judicial notice of the history of Mississippi and of the United States back as far as 1776, considering it relevant and material on the issue of probability of violence. The court stated: “History shows that there has always been friction between different ethnic and religious groups in varying degrees. Compare the intense animosity which has existed between Jew and Arab, Greek and Turk, and Irish and English.”

Evidence cannot be immaterial or irrelevant if the court can or will take judicial notice of the same facts. This Court in *Garner v. Louisiana*, 368 U.S. 157, 7 L.ed.2d 207, held that this type of evidence should be introduced in the lower court rather than have the appellate court under the necessity of taking judicial notice thereof.

Again, we point out that this evidence was admissible because of the issue to which it applied, i.e., the mental and emotional attitude of and the tension of the group in the terminal at the time of this occurrence. This evidence of occurrences a relatively short time prior thereto resulting in high tension among the people of the City of Jackson, and such tension still continuing to the date of the occurrences here according to the testimony, was admissible to show the justification of the police officers in their belief that the

presence of Petitioners under the circumstances here could result in violence.

These minor objections to the introduction of two isolated types of evidence does not, we submit, constitute reversible error and require a retrial of this entire case. The case was submitted to the jury under proper instructions and no objection of the Court below or Petitioners here is made thereto. Again, in the language of *Jones v. State*, supra: "... so long as . . . no prejudice results therefrom (strenuous cross-examination) *except such prejudice as might arise from disclosing the truth*, the severity of the cross-examination is no ground for a reversal."

### Conclusion

We have strictly limited our argument herein to the legal questions involved. We apologize for the length of this brief. We felt, however, that the decision here could be an important precedent and that the effects thereof could be far-reaching and that this justifies the full development of the legal points involved because:

(1) Police officers can be freely and easily subjected to suits in federal courts in each instance where an arrest was made during demonstrations, disturbances and riots, the volume of such litigation in the federal courts, particularly since Watts and through the tumultuous summer of 1966, could completely clog the federal district courts and later the appellate courts.

(2) The police officers should be held without defense in suits for arrests brought under 42 U.S.C. 1983 unless even months and years thereafter they can establish in each individual case of arrest that the arrested was actually guilty of the offense under a valid statute, regardless of probable

cause to believe that the accused was so guilty and regardless of reliance on a statute valid on its face, then police officers would be harassed to the extent that police action will be difficult to obtain. Why would a police officer take such a chance? An effective police force when needed would be jeopardized. Police officers are poorly paid. A judgment against them would destroy their present and future financial stability and ability to support their families. The need for adequate police protection and action will increase as the Civil Rights Movement changes to a Black Power Movement.

We respectfully urge the Court to give serious consideration to the preservation of the limited common law immunity of police officers if justified under the facts of a particular case and preserve to such police officers their right to a jury trial on such issue.

Respectfully submitted,

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**Certificate of Service**

The undersigned of counsel certifies that a true and correct copy of the foregoing Brief was this day mailed by United States mail, postage prepaid, to Carl Rachlin, 38 Park Row, New York, N.Y. and Melvin L. Wulf, 156 Fifth Avenue, New York, N.Y., attorneys of record for Petitioners.

This the — day of November, 1966.

**THOMAS H. WATKINS**

*Of Counsel for Respondents.*



## APPENDIX A

§ 2087.5

CRIMES AND MISDEMEANORS

Title 11

7. Any person violating any section of this act shall be deemed guilty of a misdemeanor, and upon conviction, shall be fined not more than Five Hundred Dollars (\$500.00), or imprisoned in the county jail for not exceeding thirty (30) days, in the discretion of the court, or the offender may be punished by both such fine and imprisonment.

8. This act shall take effect and be in force from and after its passage (approved June 11, 1964).

SOURCES: Laws, 1964, ch. 238, §§ 1-8.

REFERENCES: 12 Am Jur 2d 664, 684, Breach of Peace and Disorderly Conduct §§ 2 et seq., 28 et seq.

§ 2087.5 Disorderly conduct—may constitute felony, when.

1. Whoever with intent to provoke a breach of the peace, or under circumstances such that a breach of the peace may be occasioned thereby:

(1) crowds or congregates with others in or upon shore protecting structure or structures, or a public street or public highway, or upon a public sidewalk, or any other public place, or in any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, motion picture theatre, drive-in, beauty parlor, swimming pool area, or any sports or recreational area or place, or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered so to do by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, or

(2) insults or makes rude or obscene remarks or gestures, or uses profane language, or physical acts, or indecent proposals to or toward another or others, or disturbs or obstructs or interferes with another or others, or

(3) while in or on any public bus, taxicab, or other vehicle engaged in transporting members of the public for a fare or charge, causes a disturbance or does or says, respectively, any of the matters or things mentioned in subsection (2) supra, to, toward, or in the presence of any other passenger on said vehicle, or any person outside of said vehicle or in the process of boarding or departing from said vehicle, or any employee engaged in and about the operation of such vehicle, or

(4) refusing to leave the premises of another when requested so to do by any owner, lessee, or any employee thereof,

shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars (\$200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment: and if any person shall be guilty of disorderly conduct as defined herein and such conduct shall lead to a breach of the peace or incite a riot in any of the places herein named, and as a result of said breach of the peace or riot another person or persons shall be maimed, killed or injured, then the person guilty of such disorderly conduct as defined herein shall be guilty of a felony, and upon conviction such person shall be imprisoned in the Penitentiary not longer than ten (10) years.

2. The provisions of this act are supplementary to the provisions of any other statute of this state.

3. If any paragraph, sentence, or clause of this act shall be held to be unconstitutional or invalid, the same shall not affect any other part, portion or provision of this act, but such other part shall remain in full force and effect.

**SOURCES:** Laws, 1960, ch. 250, §§ 1-3.

**CROSS REFERENCES:** §§ 2046.5, 2087.7, 2087.9, this title.

**REFERENCE:** See generally, 17 Am Jur 187, Disorderly Conduct.

### Annotations

Words as disorderly conduct. 48 ALR 87.

Failure or refusal to obey police officer's order to move on, on street, as disorderly conduct. 65 ALR 1152.

### JUDICIAL DECISIONS

The constitutionality of this section was challenged in *Bailey v Patterson*, 199 F Supp 595, in which it was held, in view of the involvement of factual issues, that the Federal court would withhold action until the State courts should pass upon the issues; but this decision was vacated in 369 US 31, 7 L ed 2d 512, 82 S Ct 549, which, affirming that no state may require racial segregation of interstate or intrastate transportation facilities, held that the claim that the statutes so requiring are not unconstitutional was frivolous, and therefore not one in which a three-judge Federal district court is required. The appellants, however, were held to lack standing to enjoin criminal prosecutions under the breach of peace statutes, not having been prosecuted, or threatened with prosecution, under them.

This section is violative of the Fourteenth Amendment to the Federal Constitution. *Bailey v Patterson*, 206 F Supp 67.

This provision is not so vague and uncertain as to be void. *Thomas v State*, — M —, 160 So 2d 657.

Whether a specific act is a breach of the peace can only be determined in the light of circumstances. *Thomas v State*, — M —, 160 So 2d 657.

Any error in refusal to permit identification of an accused by race is rendered immaterial by his presence in court. *Knight v State*, — M —, 161 So 2d 521.

A "freedom rider" failing to obey a police officer's order, given because of antagonism displayed toward him by other persons present, to leave a bus terminal's waiting room for whites justifies his arrest under this section,

notwithstanding that his presence was in the exercise of a constitutional right. *Thomas v State*, — M —, 160 So 2d 607; *Knight v State*, — M —, 161 So 2d 521.

Persons arrested for violating ordinances by parading without a permit, in an antisegregation demonstration, held not entitled to habeas corpus in Federal court on ground that mass arrests had so invaded state courts as to deprive them of an adequate remedy under state law. *Brown v Rayfield*, 320 F2d 96, cert den 373 US 902, 11 L ed 2d 143, 84 S Ct 191.

§ 2087.7. Disorderly conduct—interference with business, customers, invitees, etc.

1. It shall be unlawful for any person or persons, while in or on the premises of another, whether that of an individual person, or a corporation, or a partnership, or an association, and on which property any store, restaurant, sandwich shop, hotel, motel, lunch counter, bowling alley, moving picture theatre or drive-in theatre, barber shop or beauty parlor, or any other lawful business is operated which engages in selling articles of merchandise or services or accommodation to members of the public, or engages generally in business transactions with members of the public, to:

(1) prevent or seek to prevent, or interfere with, the owner or operator of such place of business, or his agents or employees, serving or selling food and drink, or either, or rendering service or accommodation, or



## APPENDIX B

**Section 2087.5 Is Not and Has Never Been Held Unconstitutional on Its Face. Nor Can It Be Retroactively Held That the Enforcement Thereof Valid at the Time Deprived Petitioners of Constitutional Rights.**

While there is no doubt that 2087.5 can be enforced so as to deprive defendants of their constitutional rights, as any statute can be, the statute itself is not unconstitutional per se and no court has so held, i.e., it is valid on its face and can be enforced if the arrest thereunder is justified by the facts.

Attached hereto as Appendix A is a complete copy of Section 2087.5 of the *Mississippi 1942 Code*. In the Complaint here, R. 1, there is no allegation that the statute is unconstitutional and relief was not sought on that ground. That was an afterthought—and yet now Petitioners' chief reliance, repeated throughout their brief, is "The fact that the statute under which the arrests were purportedly made was unconstitutional on its face is sufficient to require a directed verdict against the policemen even though the formal holding of unconstitutionality was not made by this court until after the arrests." (Their brief, p. 18)

The most cursory reading of Section 2087.5 reflects that it specifically describes what constitutes a misdemeanor thereunder. It does not make it a misdemeanor merely to fail to obey an order of an officer to disperse and move on. There must be present also (1) a gathering "with intent to provoke a breach of the peace" and (2) a gathering "under circumstances that such a breach of the peace may be occasioned thereby." Thus, the statute clearly does not require any actual disturbance of the peace by the person arrested or any intent to disturb the peace, but merely either an intent to provoke other parties to breach the peace or that acts might occasion someone else to breach the peace.

The offense of "breach of the peace" is a well defined common law offense. "Breach of the peace is a common law offense . . . The offense may consist of acts of public

turbulence or indecorum in violation of the common peace and quiet . . . or of acts such as tend to excite violent resentment or to provoke or excite others to break the peace . . . Accordingly, where means which cause disquiet and disorder, and which threaten danger and disaster of the community, are used, it amounts to a breach of the peace although no actual personal violence is employed . . . " 11 C.J.S., *Breach of the Peace*, p. 818.

The Mississippi Statute is not so vague and uncertain as to be unconstitutionally void and unenforceable. " 'The Constitution does not require impossible standards'; all that is required is that the language 'convey sufficiently definite warning as to the prescribed conduct when measured by common understanding and practices.' *United States v. Petrillo*, 332 U.S. 1 \* \* \* that there may be marginal cases in which it is difficult to determine the side of the line on which a particular fact situation falls is no sufficient reason to hold the language too ambiguous to define a criminal offense. . . . " *Roth v. United States*, 354 U.S. 476, 1 L.ed.2d 1498, and cases cited. Cf. *Jordan v. DeGeorge*, 341 U.S. 225, 95 L.ed. 886; *Chaplinsky v. New Hampshire*, 315 U.S. 568, 86 L.ed. 1031; *United States v. Ragen*, 314 U.S. 513, 86 L.ed. 383; *United States v. Harriss*, 347 U.S. 612, 98 L.ed. 989; *Winters v. New York*, 333 U.S. 507, 92 L.ed. 840.

Breach of the peace statutes like the Mississippi statute have consistently been upheld as constitutional, and convictions upheld where the particular facts justified the enforcement thereof.

In 1961 when the acts here complained of occurred the applicable expressions of this Court included:

In *Feiner v. New York*, 95 L.ed. 295, 340 U.S. 315, a student was addressing a crowd, including Negroes, through a loud-speaker system from a box on the sidewalk and making derogatory remarks concerning public officials and indicating that Negroes should rise up in arms and fight for equal rights. The speaker himself was not disorderly. However, the police noted the excitement which was aroused by his speech and reached the conclusion that it might result in a fight. One of the officers requested the speaker to

get off the box. He did not accede to the request and continued talking. The officer then arrested the speaker without a warrant and he was charged with a misdemeanor under the New York breach of the peace statute which was practically identical with the Mississippi statute. This was an appeal from a criminal conviction and under the facts, admittedly stronger there than here, the Court upheld the conviction. This Court in *Feiner* clearly upheld the constitutionality of such a statute and affirmed a conviction where under the particular facts and circumstances a breach of the peace might produce violence in others. In that case the Court held:

"... the trial judge reached the conclusion that the police officers were justified in taking action to prevent a breach of the peace. \* \* \* They found that the officers in making the arrest were motivated solely by a proper concern for the preservation of order and protection of the general welfare. \* \* \* 'The offense known as breach of the peace embraces a great variety of conduct destroying or menacing public order and tranquility. *It includes not only violent acts but acts and words likely to produce violence in others.* . . .'"

In *Cantwell v. Connecticut*, 84 L.ed. 1213, 310 U.S. 296, the Court reversed a criminal conviction under the particular facts there present but carefully pointed out: "One may, however, be guilty of the offense *if he commit acts or make statements likely to provoke violence and disturbance of good order, even though no such eventuality be intended.*" The Court also carefully limited the constitutional rights of the individual to the superior rights of the state to prevent disorder, stating: "When clear and present danger of riot, disorder, interference with traffic upon the public streets, or other immediate threat to public safety, peace, or order, appears the power of the state to prevent or punish is obvious."

No statute similar to the Mississippi statute has been held unconstitutional on its face or per se by this Court:

Opposing counsel cite only cases where the courts have held that under particular facts there involved the statutes

were unconstitutionally enforced, i.e., that there was no proof of facts which constituted a breach of the peace and thus criminal convictions were merely reversed. That is all that was held in *Brown v. Louisiana*, 15 L.ed.2d 637, 383 U.S. 131.

True, in *Edwards v. South Carolina*, 372 U.S. 229, 9 L.ed.2d 697,<sup>1</sup> involving proof of nothing more than a peaceful expression of unpopular views, the court held the statute vague and indefinite. It did so, however, because it had been interpreted by the Supreme Court of South Carolina in such a way as to be vague and indefinite. The Supreme Court of South Carolina had held that the offense was "not susceptible of exact definition" and that it included any expression of views which "stirred people to anger, invited public dispute, or brought about a condition of unrest." Admittedly the common law offense of breach of the peace is not that broad and a "condition of unrest" is vague and indefinite.

Similarly, in *Cox v. Louisiana*, 379 U.S. 536, 13 L.ed.2d 471,<sup>2</sup> the Court again held that a breach of the peace statute was vague and indefinite and could not stand, but again solely because the Supreme Court of Louisiana had broadly defined a breach of the peace as "to agitate, to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet." Here, again, the definition was much broader than the common law offense of breach of the peace and the language included in the definition thereof is vague and indefinite.

The Supreme Court of Mississippi, on the other hand, has held the statute constitutional and in so doing, in affirming a criminal conviction, has based it upon there having been proof that *actual violence* could have been provoked. In *Thomas v. State*, 160 So.2d 657, the Supreme Court of Mississippi thought there was sufficient evidence to justify a finding that "if the officer had not acted in ordering defendant to move on there would have been *violence*." They merely held that the Mississippi statute could be enforced in a situation where city officials in good faith

<sup>1</sup> Involving merely reversal of criminal convictions.

<sup>2</sup> Involving merely reversal of criminal convictions.



believe that disorder and violence were imminent, i.e., narrowly construed the statute.

True, the convictions in *Thomas v. State* were reversed, but they were not reversed on the ground that the Mississippi statute was unconstitutional on its face or that there could be no arrest under it where city officials in good faith believed or the record showed that violence was imminent. The reversing opinion is reported *Thomas v. State*, 14 L.ed.2d 151. In its per curiam opinion this Court merely cited by name *Boynton v. Virginia*, 364 U.S. 454, 5 L.ed.2d 206. The Boynton Case did not even involve a breach of the peace statute, but a "trespass" statute. The Court in Boynton did no more than hold that the *Interstate Commerce Act* prohibited the officers enforcing the trespass statute at the request of the terminal restaurant manager, i.e., that the defendants had a right given them by a *federal statute* to remain in the white portion of the station and therefore could not be guilty of trespass. The Court in Boynton specifically pretermitted any constitutional question.

Officers of the City of Jackson are under an injunction not to enforce unconstitutional state statutes requiring segregation of public facilities, including those of carriers. *Bailey v. Patterson*, 323 F.2d 201, certiorari denied 11 L.ed.2d 609. They are not under an injunction from enforcing the breach of the peace statute if a breach of the peace actually occurred or was imminent in a facility of a terminal.

This Court has never held that there can be no arrest for a breach of the peace in the terminal of a carrier *regardless of the facts or circumstances and regardless of imminent violence*. The situation then resolves itself to one of fact as to whether or not under the Mississippi statute there could be arrest *if violence from others was imminent* or if the arrest was made by the officers in good faith believing that violence was imminent and not for the purpose of preventing integration. This is a jury issue.

Nor can it be said as a matter of law that violence from others towards Episcopal ministers could not possibly be imminent. In the August 26, 1966, edition of "Time" under

the heading of "Religion" there appeared the following article:

"Like many other priests, nuns and ministers, Sister Mary Angelica, 41, a second-grade teacher at Sacred Heart School in Melrose Park, last month joined Martin Luther King's march for integrated housing through the streets of Chicago. In the heavily Catholic Gage Park neighborhood, an angry youth in a jeering mob yelled, 'This is for you, nun!' and threw a brick at her. The missile struck Sister Angelica on the back of her head, opened a cut that soaked her black veil and white collar with blood. Unashamed, the crowd cheered."

The distinction between laws which are void and a nullity on the one hand and on the other hand laws which are fair on their face but nevertheless can be or are being administered in such a way as to result in deprivation of civil rights is well recognized. For example, statutes requiring segregation in schools are void on their face. *Bush v. Orleans Parish School Board*, 187 F.Supp. 42, motion denied 5 L.ed.2d 806, 365 U.S. 569. However, pupil placement statutes are usually valid on their face but can be unconstitutionally applied under given circumstances. *Flax v. Potts*, 204 F.Supp. 458, affirmed 313 F.2d 284. Cf. *Rice v. Elmore*, C.A. 4, 165 F.2d 387, cert. den. 92 L.ed. 1151, 333 U.S. 875.

And note the difference between *Murdock v. Pennsylvania*, 87 L.ed. 1292, 319 U.S. 105, and *Douglas v. Jeannette*, 87 L.ed. 1324, 319 U.S. 157. Both cases involved a city ordinance of the City of Jeannette which prohibited the solicitation of orders for merchandise without first procuring a license from the city authorities. In *Murdock* the Court reversed some criminal convictions where the ordinance was applied to the dissemination by Jehovah's Witnesses or religious tracts, holding the ordinance as so applied an unconstitutional invasion of constitutional rights. However, in *Douglas* this Court under the same circumstances refused to grant a general injunction against the enforcement of the ordinance stating that a federal court should not "... attempt to envisage in advance all the diverse

issues which could engage the intention of state courts and prosecution of Jehovah's Witnesses for violations of the present ordinance . . . by a decree saying in what circumstances and conditions the application of the city ordinance will be deemed to abridge freedom of speech and religion."

*While criminal convictions can be reversed retroactively, liability for money damages cannot be imposed retroactively.*

When the acts here complained of took place the applicable law, as expressed by this Court, was found in *Cantwell v. Connecticut* and *Feiner v. New York*, supra. A finding by this Court now that officers could not make an arrest if those arrested were not themselves violent if the officers had reasonable grounds to believe that violence in others was imminent could not, we believe, be retroactively applied so as to impose liability for money damages on police officers who were acting in good faith at the time. Police officers are not attorneys and do not have attorneys by their side advising them. The question in this case is not whether or not under the facts here they acted erroneously. Good faith errors of law or fact do not impose liability on police officers.

Where a criminal statute is later held totally unenforceable because unconstitutional on its face or in conflict with a later federal statute, this Court has held with great reluctance that a criminal conviction prior to the passage of the federal statute will be retroactively reversed. In *Hamm v. Rock Hill*, 13 L.ed.2d 300, and *Bell v. Maryland*, 12 L.ed.2d 822, the Court held in suits which were pending when the law was changed that the conviction must be reversed but on the theory that " \* \* \* there can be no legal conviction nor any valid judgment pronounced upon conviction unless the law creating the offense be at the time in existence."

That, however, is the exact opposite of the situation here. Can a change in decisions or rules or interpretation of statutes make a person civilly liable for acts which were legal when performed and by which he incurred no liability when performed? This is a case of attempt to create lia-

bility by construction of statutes by courts after the act was performed.

"The overruling of previous decision by a court . . . may work perspectively but will not be permitted to retroact \* \* \* as where contracts are made or rights acquired in reliance on the construction of a constitutional provision or a statute by an earlier decision, which construction is afterwards changed by an overruling decision." 21 C.J.S., Courts, 329. Cf. *Jackson v. Harris*, C.A. 10, 43 F.2d 513; *Douglass v. Pike County*, 25 L.ed. 968; *Reppel v. Board of Liquidation*, 11 F.Supp. 799; *Safarik v. Udall*, 304 F.2d 944, cert. den. 9 L.ed.2d 164; *Swan Island Club v. White*, 114 F.Supp. 95, affirmed 209 F.2d 698.

Unquestionably the police officers here saw that Petitioners themselves were not being violent. Unquestionably they acted in reliance on the interpretation of such a statute as in *Cantwell v. Connecticut*, supra, that there was a violation of the persons arrested were committing acts "likely to provoke violence" or when there was a clear and present danger of a disturbance of the public safety and order. Should this Court now interpret the statute as not authorizing an arrest for provoking violence by another, then the statute would be retroactively construed to the injury and damage of these policemen and thereby deprive them of the right of making a decision as to whether or not to arrest. Certainly the officers had a choice whether to arrest or not. They acted under the assumption, as they had a right to do, that the breach of the peace statute was legal and valid and that there could be arrests without any violence on the part of the person arrested if their non-violent acts probably would lead to a breach of the peace by someone else. The Court below pointed out that these policemen were "acting in Mississippi . . . in good faith under a state statute which they were entitled to presume to be valid". (R. 449)

We thus have a situation where if justified by the facts the statute could be enforced. Whether or not the statute was properly enforced in a particular case is a question of fact. If the police officers acted erroneously and without what this Court would call sufficient cause or probable



cause, this would justify this Court in reversing criminal convictions but would not, we submit, justify the imposing of money damages on the police officer who, acting in good faith, made an error in exercising his best judgment and discretion.

Police officers are immune from common law tort liability if *acting in good faith* under a state statute which they were entitled to presume to be valid and acting under facts and circumstances under which in good faith they believed the statute could be enforced. See Point I hereof. The rule is the same under 42 U.S.C. 1983. See Point IV hereof.

Moreover, there is a well established common-law rule that a public officer acting in reliance on a statute afterwards declared to be even invalid on its face does not incur any civil liability to one injured by his previous acts if he is thereby deprived of rights and it works a hardship on him personally.

This is, as pointed out by the court below, the Mississippi rule. See *Golden v. Thompson*, 11 So.2d 906, where the court held: (syl.)

"Officials of consolidated school who acted in good faith reliance on statute permitting consolidated schools to collect tuition fee from high school students did not incur personal liability by excluding from school students who failed to pay fee required by order of school board, regardless of whether such statute, the constitutionality of which had not been judicially determined, was actually invalid."

True, the Mississippi court said that in so holding it was adopting the minority rule. We think the court was confused in so stating and meant it was following an exception to the general rule. Its basis therefore was a citation of 16 C.J.S. Constitutional Law, Sec. 101, subdivision c, p. 479.<sup>3</sup> A most casual reading of this section of C.J.S. shows that it is dealing only with cases where the statute was held void on its face and a complete nullity. A well es-

<sup>3</sup> The opinion erroneously said p. 290.

established exception is noted. On page 480 no conflicting rule is stated to the text statement that:

"Also, the rule that an unconstitutional law is a nullity cannot be applied to work hardship and impose liability on a public officer who, in performance of his duty, has acted in good faith in reliance on the validity of a statute before any court has declared it invalid. . . ."

The Mississippi case of *Golden v. Thompson* is cited thereto. Many other authorities are cited thereto.

For example, by cases cited to the above quotation from the text, it is held that tax collectors are not personally liable for tax moneys collected by them without protest under a statute subsequently declared unconstitutional, citing *Anniston Mfg. Co. v. Davis*, C.A. 5, 87 F.2d 773, affirmed 81 L.ed. 1143, and *Lincoln Mills of Alabama v. Davis*, C.A. 5, 89 F.2d 1012.

The Mississippi rule, as so stated in the text, is followed by Idaho, Illinois, Oklahoma, Tennessee, Texas, Utah, California, and New York. See also the application of the rule by the federal courts prior to Erie, i.e., *Cudahy Packing Co. v. Harrison*, 18 F.Supp. 250, appeal dismissed 102 F.2d 981, where the court announced the rule as follows:

" . . . Plaintiff invokes the generality, 'An unconstitutional law is no law.' It is sufficient to say that the general language invoked cannot be applied to work a hardship upon a public officer who, in the performance of his duty, has acted in good faith, in reliance upon the validity of a statute and before any court has found that the statute is invalid."

The federal courts freely recognize qualifications of any rule of absolute retroactive invalidity of statute. In the case of *Chicot County Drainage District v. Baxter State Bank*, 84 L.ed. 329, 308 U.S. 371, the defendant pled res adjudicata based on a decree of the federal court under a federal statute in bankruptcy providing for "municipal-debt readjustments". After the decree was entered the

Act of Congress was declared unconstitutional. The Court, in holding in spite of this fact that the prior decree was *res adjudicata*, used the following language:

"The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. . . . It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,—with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified. . . ."

The *Chicot* case was cited with approval and followed in *J. A. Dougherty's Sons v. Commissioner of Internal Rev.*, C.A. 3, 121 F.2d 700, where the court held:

"Although it was formerly held that an unconstitutional statute is a nullity *ab initio* . . . more lately it has been recognized that the consequences of action taken or restricted in obedience to the requirements of a statute which subsequently is declared unconstitutional are to be appraised and adjudged in the light of

the compulsion exerted by the statute prior to its determined invalidity. . . . The subject taxpayer is under compulsion to pay due regard to the requirements of the statute until its invalidity has been authoritatively adjudicated. . . ."

Similarly here the police officers were under compulsion and duty to enforce the statute until its invalidity had been authoritatively adjudicated.

The Third Circuit similarly cited and followed the Chicot case in *Phipps v. School Dist. of Pittsburgh*, 111 F.2d 293.

*Of. Lone Star Motor Import, Inc. v. Citroen Cars Corp.*, C.A. 5, 288 F.2d 69.

Moreover, as stated, the C.J.S. text and the cases thereunder are dealing with statutes which are later declared to be unconstitutional on their face or per se and a nullity. They do not deal with cases where by later decisions the courts merely changed the rulings as to the enforcement thereof, i.e., where courts later by decision enlarged the rules as to what is an unconstitutional enforcement of the statute. The rule as to such change of or new decisions is stated in 21 C.J.S. Courts, p. 329, as follows:

"The foregoing general rule as to an overruling decision having a retroactive effect is subject to the well-settled exception that the construction of the law, as given by the overruling decision, may work prospectively but will not be permitted to retroact so as to impair the obligations of contracts entered into, or injuriously affect vested rights (i.e., immunity or privilege) acquired, in reliance on the earlier decision \* \* \* and this rule has been held to apply to the construction of taxation statutes. . . ."

See the announcement of the rule in *Jackson v. Harris*, C. A. 10, 43 F.2d 513, as follows:

"There is a well settled exception to this general rule that, where contracts have been entered into or rights acquired upon the faith of a decision, they cannot be impaired by a change of construction made by



a subsequent decision. *Moore-Mansfield Co. v. Electrical I. Co.*, 234 U.S. 619, 623, 34 S. Ct. 941, 58 L. Ed. 1503; *Douglass v. County of Pike*, 101 U.S. 677, 687, 25 L. Ed. 968; *Green County v. Conness*, 109 U.S. 104, 3 S. Ct. 69, 27 L. Ed. 872; *New Buffalo v. Cambria I. Co.*, 105 U.S. 73, 26 L. Ed. 1024; *Nickoll v. Racine C. & S. Co.*, 194 Wis. 298, 216 N. W. 502, 504; *Wilkinson v. Wallace*, 192 N. C. 156, 134 S. E. 401, 402; *Hoven v. McCarthy Bros. Co.*, 163 Minn. 339, 204 N. W. 29; 15 C. J. 960, § 358. See also *Tidal Oil Co. v. Flanagan*, 263 U. S. 444, 451-452, 44 S. Ct. 197, 68 L. Ed. 382."

Cf. *Douglass v. Pike County*, 25 L.ed. 968; *Safarik v. Udall*, 304 F.2d 944, cert. den. 9 L.ed.2d 164; and cases cited to the notes to the above text.

When this question has been raised the federal courts have consistently held that 42 U.S.C. 1983 would not be construed as imposing liability in the form of money damages upon an officer who in the performance of his duty acted in good faith in reliance on a statute valid on its face.

In *Striker v. Pancher*, C.A. 6, 317 F.2d 780, a civil action for damages under Section 1983 was brought against a sheriff who advised a prisoner to plead guilty so as to obtain a lesser sentence and the plaintiff did plead guilty without counsel. At the time of this advice it had never been held that a person accused of larceny in the state court had a constitutional right to counsel. It had been held that this was not a constitutional right in *Betts v. Brady*, 86 L.ed. 1595. This ruling was later overruled in *Gideon v. Wainwright*, 9 L.ed. 2d 799. However, the advice was given before *Gideon*. The Court, in holding that civil liability must be viewed in the light of the law at the time the act was committed, used the following language:

"It must also be kept in mind that at the time these events occurred (1952) the law as established by the Supreme Court was that a person accused of larceny in a state court had no constitutional right to counsel. *Betts v. Brady* has since been overruled, and the law as announced in the later case must be viewed as the law in the prior period. But we think this does not

mean that failure to appoint counsel in a larceny case in 1952 was such a deprivation of a constitutional right as to subject the state authorities to personal liability for damages under the statute here involved. . . . We keep in mind that we are not considering the validity of the judgment of conviction by reason of the failure to furnish the defendant the benefit of counsel. Such failure, although in a background of good faith, nevertheless invalidates the judgment. . . . Our question is a different one, namely, whether, in addition to invalidating the judgment of conviction, such failure also automatically constitutes a violation of the civil rights statute, under which this civil action for damages was instituted. We think such a result does not automatically follow and does not follow here."

In *Bowens v. Knazze*, D.C. Ill., 237 F.Supp. 826, the court pointed out that any retroactive imposition of liability on police officers would "require law enforcement officers to respond in damages every time they miscalculated in regard to what a court of last resort would determine constituted an invasion of constitutional rights." The Court then stated:

"... Unlike the requirements of a statute or the judgment of the community which can be applied retroactively, the retroactive application of the judgment of a court as to the requirements of the Constitution—based not on community standards but on legal reasoning—would place a defendant in an impossible position.

"It would require law enforcement officers to respond in damages every time they miscalculated in regard to what a court of last resort would determine constituted an invasion of constitutional rights, even where, as here, a trial judge—more learned in the law than a police officer—held that no such violation occurred.

• • •

"The applicability of the Civil Rights Act to the facts of this case must be determined with reference to the standards of constitutional protection current at the moment the defendant acted. . . .

"So long as the defendant's conduct stemmed from his reasonable belief as to the requirements of the law and was not unreasonable in any other way, he cannot be held responsible—under the standard of liability set forth in *Monroe v. Pape*—for the deprivation of plaintiff's rights. . . . Thus, the action of a police officer cannot be tortious when the officer proceeds on the basis of his reasonable, good faith understanding of the law and does not act with unreasonable violence or subject the citizen to unusual indignity. . . ."

The court below in holding that under the Mississippi rule as expressed in *Golden v. Thompson*, supra, that there was no common-law liability for false arrest where the officer acted in good faith in reliance upon a state statute subsequently declared invalid stated that: ". . . the authorities are not uniform as to whether a public officer can be held civilly liable for acting under the authority of a state statute subsequently held invalid. *Miller v. Stinnett*, 10th Cir. 1958, 257 F.2d 910." (R. 452)

The case of *Miller v. Stinnett*, C.A. 10, 257 F.2d 910, did point out a conflict but in so doing, cited only a few authorities holding an officer civilly liable for arrests made under statute subsequently declared invalid where the statutes were held invalid on their face or per se and were a complete nullity. In the *Miller* Case itself, however, the statute was not held unconstitutional on its fact but merely unconstitutionally applied by the officer and the court pointed out: "There is good and respectable authority for saying that an arrest made by a police officer for acts committed in his presence in violation of an ordinance valid upon its face, is privileged and not actionable for subsequent declaration of invalidity," citing not only the Mississippi authority but cases from Texas, Tennessee, Illinois and Michigan. True, the court in that case reversed the



lower court, but the lower court had dismissed the complaint as failing to state a cause of action. The reversal was on the ground, and only on the ground, that "While a detention made in good faith reliance on an ordinance valid on its face, but invalid or inapplicable in fact may be privileged . . . We think the stated facts susceptible to the permissible inference that the arrest and detention was not made in good faith reliance on the ordinance, but instead for the purpose of harassment to serve selfish ends, thus defeating privileged detention . . . In short, we think the appellant stated a case for the trier of the facts." On reversal and remand of the Miller Case the complainants had the burden of proving the allegations of the complaint. The court did not preclude the defense of good faith.

The court below refused to recognize good faith as a defense to actions under 42 U.S.C. 1983. Its only authority therefor was the statement that "Inherent in the Monroe holding is the principle that good faith and reliance upon the state statute subsequently declared invalid are not available as defenses." (R, 450)

There is no basis whatsoever for any such assumption on the part of the court below. The Monroe Case dealt with actions of the police officers not only not based on any state statute or in reliance on any state statute, but in direct conflict with state statutes.

The Mississippi rule as expressed in *Golden v. Thompson*, supra, is no a local rule not recognized in other states. There is no federal authority in conflict therewith. We again refer the Court to *Striker and Bowens*, supra, involving actions under 42 U.S.C. 1938.

We also refer the Court to the decisions from the Supreme Court of the United States cited in *Jackson v. Harris*, 43 F.2d 513, supra, in support of the rule that where contracts have been entered into or rights acquired upon the faith of a decision they cannot be impaired by a change of construction made by a subsequent decision. The rights here acquired were the rights to immunity if the acts were done in good faith upon probable cause.

Petitioners rely primarily on *Smith v. Allwright*, 321 U.S. 649, 88 L.ed. 987. In that case an action under 42 U.S.C.



1983 was brought by a Negro against election judges for failure to permit him to cast a ballot in a primary election. "The refusal is alleged to have been solely because of the race and color of the proposed voter." The complaint was dismissed in the court below without trial on the basis of a prior decision of the Supreme Court. The action of the election judges was based on a resolution of the Executive Committee of the Democratic Party to the effect that white Democrats and none other might participate in the primary. This Court reversed its prior ruling and held that where the primary is by law made an integral part of the election machinery that this resolution of the Executive Committee of the Democratic Party had the effect of a state statute and was void on its face. It therefore merely reversed the lower court in dismissing the complaint. The case can be distinguished on three grounds: (1) *The resolution, held a statute, was void on its face in specifically denying to Negroes their constitutional right to vote.* (2) *The question of the retroactive effect of the change of new decision of the Supreme Court was not raised.* (3) The case was remanded for a trial, although it was apparently admitted that the refusal was solely because of the race and color of the proposed voter. If so, there would be no immunity of any kind. There is no common-law immunity under any circumstances for deliberate denial of the right to vote because of color. There was not involved in that case the question of immunity of police officers or judicial officers.<sup>4</sup>

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<sup>4</sup> The other three cases relied on by Petitioners, *Lane v. Wilson*, 83 L. ed. 1281, 307 U.S. 268; *Nixon v. Herndon*, 273 U.S. 536, 71 L. ed. 759; and *Myers v. Anderson*, 238 U.S. 368, 59 L. ed. 1349, can all be distinguished on the above grounds.

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IN THE

**Supreme Court of the United States**

THOMAS DAVIS, CLERK

OCTOBER TERM, 1966

No. 79

ROBERT L. PIERSON, *et al.*,

*Petitioners,*

—v.—

J. L. RAY, *et al.*,

*Respondents.*

No. 94

J. L. RAY, *et al.*,

*Petitioners,*

—v.—

ROBERT L. PIERSON, *et al.*,

*Respondents.*

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

**REPLY BRIEF FOR PETITIONERS IN CAUSE NO. 79  
AND RESPONDENTS IN CAUSE NO. 94**

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ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE FIFTH CIRCUIT

---

**REPLY BRIEF FOR PETITIONERS IN CAUSE NO. 79  
AND RESPONDENTS IN CAUSE NO. 94**

## I.

**Respondents do not rebut the conclusion that Congress modified the common law immunity of the judiciary to suits for damages,**

Respondents never deal with the real question before this Court—what did the 1871 Congress do? References to Black Power, or Watts, or Martin Luther King, or Communist infiltration do not help at all. Perhaps those words—and all the emotions that lie behind them—would be relevant to what a 1966 Congress would be likely to do when faced with choices between the individual and the official. But the issue before this Court is the meaning of the 1871 Congress. And that Congress (as is shown in the portions of our brief which respondents never meet) intentionally and knowingly gave harsh remedies against state officials.

What did that Congress do about the common law immunity of judges? It overrode it for state judges, knowingly and over the explicit objections of opponents.

In many cases of statutory interpretation, analysis of the debate merely indicates a few opinions as to meaning of ambiguous language. "The rest is silence." And so the Court is not helped much by such debate. But in the matter before this Court today, no speculation is required. The language is clear. Judges' liability is covered explicitly in the debate (as it had been in 1866). Everyone, opponents and proponents, said that judges would be liable. No doubt can seriously exist as to this fact. Whatever the merits may be for judicial immunity in other cases, it would be rewriting this law to find such immunity here.

We add that in our view this means liability for judges for knowingly or willfully depriving one of equal rights.

No argument is made, nor can it be made, that Congress has not the power to hold judges liable for knowing wrongs. No deep incursion into civil war history is needed to explain the mind of the earlier Congress. In just such cases as are before us today, certain local judges played their roles, together with the police, in denying equal rights. Whatever the facts, the police arrest and the judges convict. This is the wrong Congress intended to correct. We urge that that is the case before us and is encompassed within the intent of Congress.

Contrary to what respondents contend (brief p. 37), Police Justice Spencer does have to rely upon an absolute immunity from being sued for knowingly and willfully depriving persons of their constitutional rights. Petitioners' proof with respect to Judge Spencer was cut off by the trial court. The jury verdict was, of course, tainted by the admission of improper evidence. The decision of the Fifth Circuit was in effect, and by express statement, a ruling that the police Justice was immune without regard to the allegations against him or what the proof might show.

## II.

### **Did petitioners consent to the arrest?**

Consent to an illegal arrest is absurd on its face. An arrest is an intentional act by police officers. It is no more a consensual act to be arrested than it is consensual to be electrocuted at a later time in the arrest process.

While it is certainly true that petitioners knew that they might be arrested no matter how peaceful they were, because of the way the police were acting in Jackson, the option was entirely that of the police. Petitioners had a

right to be there in a peaceful manner. Being peaceful, they were nevertheless arrested. At this point, a brave man must face his responsibility. To have left this station after this clearly improper order of the police, when one is doing no wrong, would have been an act of cowardice. In every way, it would have continued to perpetuate the immoral practice of segregation. If people walk away at this, the immoral practice goes on. But knowing that the police will probably act improperly does not make the refusal to move an act of consent. One may consent to a variety of acts, such as batteries, but that was not the case here. Knowledge that they would be arrested should they refuse the illegal order of the police is hardly the consent that vitiates the wrong of the police, knowingly acting in response to the police stanchion, "White only, by order of the police."

The "plan and purpose" defense suggested by the Fifth Circuit could not come into play until petitioners were arrested and the arrests are found to have been illegal. Consequently, most of what respondents say on that issue is beside the point. If the arrests were illegal, and if, as is conceded, the ministers did nothing to initiate the arrests other than to enter the terminal as an integrated group, then surely those who made the illegal arrest should not be free from liability because the persons arrested knew that they might be or even probably would be arrested. No less is this true even though they thought that an arrest might hasten the end of evil by exposing it. The arrests were just as illegal whether the ministers deplored their arrests as symptomatic of sham justice in support of segregation or thought their arrests would be a useful witness which would focus attention on sham justice in support of segregation.



## III.

**Respondents improperly interpret the claim of petitioners as being based solely on the later declaration of unconstitutionality in *Thomas v. Mississippi*.**

Respondents and the Court below (R. 448-449) misinterpret the claim of petitioners. We rely only in part on the fact that in *Thomas v. Mississippi*, 380 U. S. 564 (1965), this Court reversed the convictions of the freedom riders, without oral argument, on the theory that the statute of Mississippi, as interpreted by their Courts, was unconstitutional. But we urge that equally significant, and ignored by the Court below, is the fact that at the trial *de novo* of Father Jones, the case was dismissed by Judge Moore at the end of the prosecution's case. In other words, there was no evidence which showed a violation of law, and therefore no basis for the arrests.

In this sense, the case before us now is different from *Thomas v. Mississippi, supra*. In *Thomas* the convictions by Judge Spencer were upheld by Judge Moore in the trial *de novo* as well as in the higher appeals in Mississippi. But not so in the case before us. There was no evidence for the arrest in the first place in our case. We do not rely solely as the Court below thought, then, on the statute being declared later unconstitutional. We urge that these defendants individually and in concert arrested and convicted petitioners and thus knowingly deprived them of equal rights guaranteed by the United States Constitution and particularly section 1983.

The evidence in this case, together with what we were allowed to show, upholds our contention that they were

arrested solely for the purpose of protecting segregation in Mississippi. In front of the door to the bus station was the sign "White Only by Order of the Police". In other words, if Negro and white clergymen entered together they were in violation of the police order. This explains the action of the police immediately after the clergymen entered the station. This accounts for the arrest. Nothing in the conduct of the clergymen can account for it. Furthermore, this Court's decision in *Thomas v. Mississippi*, 380 U. S. 524 (1965), reversing at the time it granted certiorari, holds that peaceful persons, who have done nothing to incite others to violence, contrast *Feiner v. New York*, 340 U. S. 315 (1951), cannot be arrested because others indicate that they so dislike them that they might act violently against them. That was the issue in *Abernathy v. Alabama*, 380 U. S. 447 (1965), one of the two cases cited by this Court in *Thomas* (see *Abernathy v. Alabama*, 155 So. 2d (Ala. Ct. Appeals 1962)).\* The purported basis for the arrests, therefore, has been held insufficient by this Court. When that is the case, the state official is liable for his actions even though, as with the "Judges of Elections" involved in *Nixon v. Herndon*, 273 U. S. 536, 539 (1927), the action was taken on the basis of a state statute, even if, as in *Smith v. Allwright*, 321 U. S. 649 (1944), the state statute had earlier been upheld by this Court.

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\* Similarly in *Cox v. Louisiana*, 379 U. S. 536 (1965), this Court held not only that the Louisiana statute—this statute *in haec verba*—was unconstitutionally vague, but also that the state could not arrest and punish unpopular but non-violent persons merely because "violence was about to erupt" from others.

## IV.

**Probable cause for the arrests herein has improperly been admitted as a defense to plaintiffs' causes of action.**

As *Prosser On Torts* points out, Section 12 (3rd edition), much confusion exists as to the difference between false arrest and malicious prosecution. Malicious prosecution derives from the common law action founded in case. It is an action directed not against the police officer carrying out the mandate of a Court to arrest a particular person, but against the person making the charge to the police. Probable cause is available to such a person when sued for damages.

But to the officer making an arrest without a warrant of a court, for an act allegedly committed in his presence, no defense of probable cause is available in a suit for damages. This is an action for false arrest and stems from the Common Law action of trespass.

The confusion discussed by Prosser is illustrated both by the Court below (R. 452) and our worthy opponents in their brief at page 23.

Our opponents cite, as they acknowledge, malicious prosecution cases to prove the availability of probable cause as a defense. But this is precisely the difference between false arrest (trespass) and malicious prosecution (case). The cases they cite are not false arrest actions, and so are irrelevant.

Before this Court is an action for false arrest. While the Mississippi Courts illustrate the general confusion as to these causes of action, analysis shows that the Mississippi cases where probable cause was allowed as a defense, the

complaint alleged a malicious prosecution whatever the term actually used. Nothing in *Forsythe v. Ivey* is to the contrary (cited by our opponents on pages 21-2 of their brief). In that case nowhere does the Court state that probable cause is available as a defense in an action for false arrest.

Probable cause is not applicable to arrests made, as in the case at bar, where the action is against arresting officers and where the arrested persons committed no wrongful acts (as found by the trial *de novo*). Nor, at least under section 1983, is it a defense to arrests purportedly justified by a statute which is in fact unconstitutional.

The Court of Appeals (R. 452), conceived of Petitioner's action as being based solely upon a statute later declared unconstitutional (see *Thomas v. Mississippi, supra*). But, of course, this has never been so, thus the citation of *Golden v. Thompson*, 194 Miss. 241, 11 So. 2d 206 in their opinion is also quite irrelevant to the question of arrests made without evidence, since it does not discuss probable cause as a defense in a case of this kind.



## V.

**Respondents' factual statements.**

1. Page 7: Petitioners had not at any time "congregated there standing in a group so as to block the stairs." Only subsequently to their being halted and then arrested did they stop inside the station. And accordingly any crowd that collected, if there was such, resulted from the police stopping and arresting them, and not from anything they had done.

2. Page 7: The reciting of the Lord's Prayer did not take place until after they were arrested, and thus could not be the cause of any crowd collecting before they were arrested.

3. Page 7: Respondents in effect concede at the outset everything they deny thereafter for they agree that police officers Griffith and Nichols prevented the ministers from entering the restaurant. It was afterwards, when the ministers had been brought back into the waiting room, that those officers arrested the ministers without seeking in any way to calm or restrain the "mumbling" onlookers.

## VI.

**CONCLUSION**

For these reasons, as well as those set forth in our main brief, we request that the relief be granted as set forth in our main brief.

Respectfully submitted,

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# SUPREME COURT OF THE UNITED STATES

Nos. 79 AND 94.—OCTOBER TERM, 1966.

Robert L. Pierson et al.,  
Petitioners,

79

v.

J. L. Ray et al.

J. L. Ray et al., Petitioners,

94

v.

Robert L. Pierson et al.

On Writs of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[April 11, 1967.]

MR. CHIEF JUSTICE WARREN delivered the opinion of  
Court.

This case presents issues involving the liability of local police officers and judges under § 1 of the Civil Rights Act of 1871, 42 U. S. C. § 1983.<sup>1</sup> Petitioners in Number 79 were members of a group of 15 white and Negro Episcopal clergymen who attempted to use segregated facilities at an interstate bus terminal in Jackson, Mississippi, in 1961. They were arrested by respondents Ray, Griffith, and Nichols, policemen of the City of Jackson, and charged with violating § 2087.5 of the Mississippi Code, which makes guilty of a misdemeanor anyone who congregates with others in a public place under circumstances such that a breach of the peace may be occasioned thereby, and refuses to move on when

<sup>1</sup> "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress." 17 Stat. 13.

ordered to do so by a police officer.<sup>2</sup> Petitioners<sup>3</sup> waived a jury trial and were convicted of the offense by respondent Spencer, a municipal police justice. They were each given the maximum sentence of four months in jail and a fine of \$200. On appeal petitioner Jones was accorded a trial *de novo* in the County Court, and after the city produced its evidence the court granted his motion for a directed verdict. The cases against the other petitioners were then dropped.

Having been vindicated in the County Court, petitioners brought this action for damages in the United States District Court for the Southern District of Mississippi, Jackson Division, alleging that respondents had violated § 1983, *supra*, and that respondents were liable at common law for false arrest and imprisonment. A jury returned verdicts for respondents on both counts. On appeal, the Court of Appeals for the Fifth Circuit held that respondent Spencer was immune from liability

<sup>2</sup> "1. Whoever with intent to provoke a breach of the peace or under circumstances such that a breach of the peace may be occasioned thereby:

"(1) crowds or congregates with others in . . . any hotel, motel, store, restaurant, lunch counter, cafeteria, sandwich shop, . . . or any other place of business engaged in selling or serving members of the public, or in or around any free entrance to any such place of business or public building, or to any building owned by another individual, or a corporation, or a partnership or an association, and who fails or refuses to disperse and move on, or disperse or move on, when ordered to do so by any law enforcement officer of any municipality, or county, in which such act or acts are committed, or by any law enforcement officer of the State of Mississippi, or any other authorized person, . . . shall be guilty of disorderly conduct, which is made a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not more than two hundred dollars (\$200.00), or imprisonment in the county jail for not more than four (4) months, or by both such fine and imprisonment . . ."

<sup>3</sup> The ministers involved in this case will be designated as "petitioners" throughout this opinion, although they are the respondents in No. 94.



under both § 1983 and the common law of Mississippi for acts committed within his judicial jurisdiction. As to the police officers, the court noted that § 2087.5 of the Mississippi Code was held unconstitutional as applied to similar facts in *Thomas v. Mississippi*, 380 U. S. 524 (1965).<sup>4</sup> Although *Thomas* was decided years after the arrest involved in this trial, the court held that the policeman would be liable in a suit under § 1983 for an unconstitutional arrest even if they acted in good faith and with probable cause in making an arrest under a state statute not yet held invalid. The court believed that this stern result was required by *Monroe v. Pape*, 365 U. S. 167 (1961). Under the count based on the common law of Mississippi, however, it held that the policemen would not be liable if they had probable cause to believe that the statute had been violated, because Mississippi law does not require police officers to predict at their peril which state laws are constitutional and which are not. Apparently dismissing the common-law claim,<sup>5</sup> the Court of Appeals reversed and remanded for

<sup>4</sup> In *Thomas* various "Freedom Riders" were arrested and convicted under circumstances substantially similar to the facts of these cases. The police testified that they ordered the "Freedom Riders" to leave because they feared that onlookers might breach the peace. We reversed without argument or opinion, citing *Boynston v. Virginia*, 364 U. S. 454 (1960). *Boynston* held that racial discrimination in a bus terminal restaurant utilized as an integral part of the transportation of interstate passengers violates § 216 (d) of the Interstate Commerce Act. State enforcement of such discrimination is barred by the Supremacy Clause.

<sup>5</sup> Respondents read the court's opinion as remanding for a new trial on this claim. The court stated, however, that the officers "are immune from liability for false imprisonment at common law but not from liability for violations of the Federal statutes on civil rights. It therefore follows that there should be a new trial of the civil rights claim against the appellee police officers so that there may be a determination of the fact issue as to whether the appellants invited or consented to the arrest and imprisonment." 352 F. 2d, at 221.

a new trial on the § 1983 claim against the police officers because defense counsel had been allowed to cross-examine the ministers on various irrelevant and prejudicial matters, particularly including an alleged convergence of their views on racial justice with those of the Communist Party. At the new trial, however, the court held that the ministers could not recover if it were proved that they went to Mississippi anticipating that they would be illegally arrested because such action would constitute consent to the arrest under the principle of *volenti non fit injuria*, he who consents to a wrong cannot be injured.

We granted certiorari in No. 79 to consider whether a local judge is liable for damages under § 1983 for an unconstitutional conviction and whether the ministers should be denied recovery against the police officers if they acted with the anticipation that they would be illegally arrested. We also granted the police officers' petition in No. 94 to determine if the Court of Appeals correctly held that they could not assert the defense of good faith and probable cause to an action under § 1983 for unconstitutional arrest.\*

The evidence at the federal trial showed that petitioners and other Negro and white Episcopal clergymen undertook a "prayer pilgrimage" in 1961 from New Orleans to Detroit. The purpose of the pilgrimage was to visit church institutions and other places in the North and South to promote racial equality and integration, and, finally, to report to a church convention in Detroit. Letters from the leader of the group to its members indicate

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\* Respondents did not challenge in their petition in No. 94 the holding of the Court of Appeals that a new trial is necessary because of the prejudicial cross-examination. Belatedly, they devoted a section of their brief to the contention that the cross-examination was proper. This argument is no more meritorious than it is timely. The views of the Communist Party on racial equality were not an issue in this case.

that the clergymen intended from the beginning to go to Jackson and attempt to use segregated facilities at the bus terminal there, and that they fully expected to be arrested for doing so. The group made plans based on the assumption that they would be arrested if they attempted peacefully to exercise their right as interstate travelers to use the waiting rooms and other facilities at the bus terminal, and the letters discussed arrangements for bail and other matters relevant to arrests.

The ministers stayed one night in Jackson, and went to the bus terminal the next morning to depart for Chattanooga, Tennessee. They entered the waiting room, disobeying a sign at the entrance that announced "White Waiting Room Only—By Order of the Police Department." They then turned to enter the small terminal restaurant but were stopped by two Jackson police officers, respondents Griffith and Nichols, who had been awaiting their arrival and who ordered them to "move on." The ministers replied that they wanted to eat, and refused to move on. Respondent Ray, then a police captain and now the deputy chief of police, arrived a few minutes later. The ministers were placed under arrest and taken to the jail.

All witnesses including the police officers agreed that the ministers entered the waiting room peacefully and engaged in no boisterous or objectionable conduct while in the "White Only" area. There was conflicting testimony on the number of bystanders present and their behavior. Petitioners testified that there was no crowd at the station, that no one followed them into the waiting room, and that no one uttered threatening words or made threatening gestures. The police testified that some 25 to 30 persons followed the ministers into the terminal, that persons in the crowd were in a very dissatisfied and ugly mood, and that they were mumbling and making unspecified threatening gestures. The police

did not describe any specific threatening incidents, and testified that they took no action against any persons in the crowd who were threatening violence because they "had determined that the ministers was the cause of the violence if any might occur,"<sup>1</sup> although the ministers were concededly orderly and polite and the police did not claim that it was beyond their power to control the allegedly disorderly crowd. The arrests and convictions were followed by this lawsuit.

We find no difficulty in agreeing with the Court of Appeals that Judge Spencer is immune from liability for damages for his role in these convictions. The record is barren of any proof or specific allegation that Judge Spencer played any role in these arrests and convictions other than to adjudge petitioners guilty when their cases came before his court.<sup>2</sup> Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in *Bradley v. Fisher*, 13 Wall. (80 U. S.) 335 (1871). This immunity applies even when the judge is accused of acting maliciously and corruptly, and it "is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence, and without fear of consequences." (*Scott v. Stansfield*, L. R. 3 Ex. 220, 223 (1868)); quoted in *Bradley v. Fisher*,

<sup>1</sup> Transcript of Record, p. 347. (Testimony of Officer Griffith.)

<sup>2</sup> Petitioners attempted to suggest a "conspiracy" between Judge Spencer and the police officers by questioning him about his reasons for finding petitioners guilty in these cases and by showing that he had found other "Freedom Riders" guilty under similar circumstances in previous cases. The proof of conspiracy never went beyond this suggestion that inferences could be drawn from Judge Spencer's judicial decisions. See Transcript of Record, pp. 352-371.



*supra*, at 349.) It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation.

We do not believe that this settled principle of law was abolished by § 1983, which makes liable "any person" who under color of law deprives another person of his civil rights. The legislative record gives no clear indication that Congress meant to abolish wholesale all common-law immunities. Accordingly, this Court held in *Tenney v. Brandhove*, 341 U. S. 367 (1951), that the immunity of legislators for acts within the legislative role was not abolished. The immunity of judges for acts within the judicial role is equally well-established, and we presume that Congress would have specifically so provided had it wished to abolish the doctrine.\*

The common law has never granted police officers an absolute and unqualified immunity, and the officers in this case do not claim that they are entitled to one. Their claim is rather that they should not be liable if they acted in good faith and with probable cause in making an arrest under a statute that they believed to be valid. Under the prevailing view in this country a peace officer who arrests someone with probable cause is not liable for false arrest simply because the innocence of the suspect is later proved. *Restatement (Second), Torts* § 121 (1965); 1 Harper & James, *Torts* § 3.18, at

\* Since our decision in *Tenney v. Brandhove*, *supra*, the circuit courts of appeal have consistently held that judicial immunity is a defense to an action under § 1983. See *Bauers v. Heisel*, 361 F. 2d 581 (C. A. 3d Cir. 1966), and cases cited therein.

277-278 (1956); *Ward v. Fidelity & Deposit Co. of Maryland*, 179 F. 2d 327 (C. A. 8th Cir. 1950). A policeman's lot is not so unhappy that he must choose between being charged with dereliction of duty if he does not arrest when he has probable cause, and being mulcted in damages if he does. Although the matter is not entirely free from doubt,<sup>10</sup> the same consideration would seem to require excusing him from liability for acting under a statute that he reasonably believed to be valid but that was later held unconstitutional, on its face or as applied.

The Court of Appeals held that the officers had such a limited privilege under the common law of Mississippi,<sup>11</sup> and indicated that it would have recognized a similar privilege under § 1983 except that it felt compelled to hold otherwise by our decision in *Monroe v. Pape*, 365 U. S. 167 (1961). *Monroe v. Pape* presented no question of immunity, however, and none was decided. The complaint in that case alleged that "13 Chicago police officers broke into petitioners' home in the early morning, routed them from bed, made them stand naked in the living room, and ransacked every room, emptying drawers and ripping mattress covers. It further allege[d] that Mr. Monroe was then taken to the police station and detained on 'open' charges for 10 hours, while he was interrogated about a two-day-old murder, that he was not taken before a magistrate, though one was accessible, that he was not permitted to call his family or attorney, that he was subsequently released without criminal charges being preferred against him." 365 U. S., at 169. The police officers did not choose to go to trial and defend the case on the hope that they could convince a jury that they

<sup>10</sup> See Caveat, *Restatement (Second), Torts* § 121 (1965), at 207-208; *Miller v. Stinnett*, 257 F. 2d 910 (C. A. 10th Cir. 1958).

<sup>11</sup> See *Golden v. Thompson*, 194 Miss. 241, 11 So. 2d 906 (1943).

believed in good faith that it was their duty to assault Monroe and his family in this manner. Instead, they sought dismissal of the complaint, contending principally that their activities were so plainly illegal under state law that they did not act "under color of any statute, ordinance, regulation, custom or usage, of any State or Territory" as required by § 1983. In rejecting this argument we in no way intimated that the defense of good faith and probable cause was foreclosed by the statute. We also held that the complaint should not be dismissed for failure to state that the officers had "a specific intent to deprive a person of a federal right," but this holding, which related to requirements of pleading, carried no implications as to which defenses would be available to the police officers. As we went on to say in the same paragraph, § 1983 "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." 365 U. S., at 187. Part of the background of tort liability, in the case of police officers making an arrest, is the defense of good faith and probable cause.

We hold that the defense of good faith and probable cause, which the Court of Appeals found available to the officers in the common-law action for false arrest and imprisonment, is also available to them in the action under § 1983. This holding does not, however, mean that the complaint should be dismissed. The Court of Appeals ordered dismissal of the common-law count on the theory that the police officers were not required to predict our decision in *Thomas v. Mississippi*, *supra*. We agree that a police officer is not charged with predicting the future course of constitutional law. But the petitioners in this case did not simply argue that they were arrested under a statute later held unconstitutional. They claimed and attempted to prove that the police

officers arrested them solely for attempting to use the "White Only" waiting room, that no crowd was present, and that no one threatened violence or seemed about to cause a disturbance. The officers did not defend on the theory that they believed in good faith that it was constitutional to arrest the ministers solely for using the waiting room. Rather, they claimed and attempted to prove that they did not arrest the ministers for the purpose of preserving the custom of segregation in Mississippi, but solely for the purpose of preventing violence. They testified, in contradiction to the ministers, that a crowd gathered and that imminent violence was likely. If the jury believed the testimony of the officers and disbelieved that of the ministers, and if the jury found that the officers reasonably believed in good faith that the arrest was constitutional, then a verdict for the officers would follow even though the arrest was in fact unconstitutional. The jury did resolve the factual issues in favor of the officers but, for reasons previously stated, its verdict was influenced by irrelevant and prejudicial evidence. Accordingly, the case must be remanded to the trial court for a new trial.

It is necessary to decide what importance should be given at the new trial to the substantially undisputed fact that the petitioners went to Jackson expecting to be illegally arrested. We do not agree with the Court of Appeals that they somehow consented to the arrest because of their anticipation that they would be illegally arrested, even assuming that they went to the Jackson bus terminal for the sole purpose of testing their rights to unsegregated public accommodations. The case contains no proof or allegation that they in any way tricked or goaded the officers into arresting them. The petitioners had the right to use the waiting room of the Jackson bus terminal, and their deliberate exercise of



that right in a peaceful, orderly, and inoffensive manner does not disqualify them from seeking damages under § 1983.<sup>12</sup>

The judgment of the Court of Appeals is affirmed in part and reversed in part, and the case is remanded for further proceedings consistent with this opinion.

*It is so ordered.*

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<sup>12</sup> The petition for certiorari in No. 79 also presented the question whether the Court of Appeals correctly dismissed the count based on the common law of Mississippi. We do not ordinarily review the holding of a court of appeals on a matter of state law, and we find no reason for departing from that tradition in this case. The state common-law claim in this case is merely cumulative, and petitioners' right to recover for an invasion of their civil rights, subject to the defense of good faith and probable cause, is adequately secured by § 1983.

# SUPREME COURT OF THE UNITED STATES

Nos. 79 AND 94.—OCTOBER TERM, 1966.

Robert L. Pierson et al.,  
Petitioners,

79

v.

J. L. Ray et al.

J. L. Ray et al., Petitioners,

94

v.

Robert L. Pierson et al.

On Writs of Certiorari to  
the United States Court  
of Appeals for the Fifth  
Circuit.

[April 11, 1967.]

MR. JUSTICE DOUGLAS, dissenting.

I do not think that all judges, under all circumstances, no matter how outrageous their conduct are immune from suit under R. S. § 1979, 42 U. S. C. § 1983. That ruling is not justified by the admitted need for a vigorous and independent judiciary, is not commanded by the common-law doctrine of judicial immunity, and does not follow inexorably from our prior decisions.

The statute, which came on the books as § 1 of the Klu Klux Klan Act of April 20, 1871, 17 Stat. 13, provides that "every person" who under color of state law or custom "subjects, or causes to be subjected, any citizen . . . to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proceeding for redress." To most, "every person" would mean *every person*, not every person *except* judges. Despite the plain import of those words, the Court decided in *Tenney v. Branhove*, 341 U. S. 367, that state legislators are immune from suit as long as the deprivation of civil rights which they caused a person occurred while the legislators "were acting in a field

where legislators traditionally have the power to act." *Id.*, at 379. I dissented from the creation of that judicial exception as I do from the creation of the present one.

The congressional purpose seems to me to be clear. A condition of lawlessness existed in certain of the States, under which people were being denied their civil rights. Congress intended to provide a remedy for the wrongs being perpetrated. And its members were not unaware that certain members of the judiciary were implicated in the state of affairs which the statute was intended to rectify. It was often noted that "immunity is given to crime, and the records of the public tribunals are searched in vain for any evidence of effective redress." Cong. Globe, 42d Cong., 1st Sess., 374. Mr. Rainey of South Carolina noted that "The courts are in many instances under the control of those who are wholly inimical to the impartial administration of justice." *Id.*, at 394. Congressman Beatty claimed that it was the duty of Congress to listen to the appeals of those who "by reason of popular sentiment or secret organizations or prejudiced juries or bribed judges (cannot) obtain the rights and privileges due an American citizen. . . ." *Id.*, at 429. The members supporting the proposed measure were apprehensive that there had been a complete breakdown in the administration of justice in certain States and that laws nondiscriminatory on their face were being applied in a discriminatory manner, that the newly won civil rights of the Negro were being ignored, and that the Constitution was being defied. It was against this background that the section was passed, and it is against this background that it should be interpreted.

It is said that, at the time of the statute's enactment, the doctrine of judicial immunity was well settled and that Congress cannot be presumed to have intended to abrogate the doctrine since it did not clearly evince such a purpose. This view is beset by many difficulties. It

assumes that Congress could and should specify in advance all the possible circumstances to which a remedial statute might apply and state which cases are within the scope of a statute.

"Underlying [this] view is an atomistic conception of intention, coupled with what may be called a pointer theory of meaning. This view conceives the mind to be directed toward individual things, rather than toward general ideas, toward distinct situations of fact rather than toward some significance in human affairs that these situations may share. If this view were taken seriously, then we would have to regard the intention of the draftsman of a statute directed against 'dangerous weapons' as being directed toward an endless series of individual objects: revolvers, automatic pistols, daggers, Bowie knives, etc. If a court applies the statute to a weapon its draftsman had not thought of, then it would be 'legislating,' not 'interpreting,' as even more obviously it would be if it were to apply the statute to a weapon not yet invented when the statute was passed." Fuller, *The Morality of Law* 84 (1964).

Congress of course acts in the context of existing common-law rules, and in construing a statute a court considers the "common law before the making of the Act." *Hayden's Case*, 3 Co. Rep. 72, 76 Eng. Rep. 637 (Exch. 1584). But Congress enacts a statute to remedy the inadequacies of the pre-existing law, including the common law.<sup>1</sup> It cannot be presumed that the common law is the perfection of reason, is superior to statutory law (Sedgwick, *Construction of Statutes* 270 (1st ed.

<sup>1</sup> "Remedial statutes are to be liberally construed." See generally, Llewellyn, *Remarks on the Theory of Appellate Decision and the Rules or Canons About How Statutes Are To Be Construed*, 3 Vand. L. Rev. 395 (1950); Llewellyn, *The Common Law Tradition*, Appendix C (1960).



ed. 1857); Pound, *Common Law and Legislation*, 21 Harv. L. Rev. 383, 404-406 (1908)), and that the legislature always changes law for the worse. Nor should the canon of construction "statutes in derogation of the common law are to be strictly construed" be applied so as to weaken a remedial statute whose purpose is to remedy the defects of the pre-existing law.

The position that Congress did not intend to change the common-law rule of judicial immunity ignores the fact that every member of Congress who spoke to the issue assumed that the words of the statute meant what they said and that judges would be liable. Many members of Congress objected to the statute because it imposed liability on members of the judiciary. Mr. Arthur of Kentucky opposed the measure because:

"Hitherto . . . no judge or court has been held liable, civilly or criminally, for judicial acts . . . . Under the provisions of [section 1] every judge in the State court . . . will enter upon and pursue the call of official duty with the sword of Damocles suspended over him. . . ." Cong. Globe, 42d Cong., 1st Sess., 365.

And Senator Thurman noted that:

"There have been two or three instances already under the civil rights bill of States judges being taken into the United States district court, sometimes upon indictment for the offense of honestly and conscientiously deciding the law as they understood it to be . . . .

"Is [section 1] intended to perpetuate that? Is it intended to enlarge it? Is it intended to extend it so that no longer a judge sitting on the bench to decide causes can decide free from any fear except that of impeachment, which never lies in the absence of corrupt motive? Is that to be extended, so that

every judge of a State may be liable to be dragged before some Federal judge to vindicate his opinion and to be mulcted in damages if that Federal judge shall think the opinion was erroneous? That is the language of the bill." *Id.*, at 217, Appendix.

Mr. Lewis of Kentucky expressed the fear that:

"By the first section, in certain cases, the judge of a State court, though acting under oath of office, is made liable to suit in the Federal court and subject to damages for his decision against a suitor. . . ." *Id.*, at 385.

Yet despite the repeated fears of its opponents, and the explicit recognition that the section would subject judges to suit, the section remained as it was proposed: it applied to "any person." \* There was no exception for members of the judiciary. In light of the sharply contested nature of the issue of judicial immunity it would be reasonable to assume that the judiciary would have been expressly exempted from the wide sweep of the section, if Congress had intended such a result.

The section's purpose was to provide redress for the deprivation of civil rights. It was recognized that certain members of the judiciary were instruments of oppression and were partially responsible for the wrongs to be remedied. The parade of cases coming to this Court shows that a similar condition now obtains in some of the States. Some state courts have been instruments of suppression of civil rights. The methods may have changed; the means may have become more subtle; but the wrong to be remedied still exists.

Today's decision is not dictated by our prior decisions. In *Ex parte Virginia*, 100 U. S. 339, the Court held

\* As altered by the reviser who prepared the Revised Statutes of 1878, and as printed in 42 U. S. C. § 1983, the statute refers to "every person" rather than to "any person."

that a judge who excluded Negroes from juries could be held liable under the Act of March 1, 1875, one of the Civil Rights Acts. The Court assumed that the judge was merely performing a ministerial function. But it went on to state that the judge would be liable under the statute even if his actions were judicial.<sup>3</sup> It is one thing to say that the common-law doctrine of judicial immunity is a defense to a common-law cause of action. But it is quite another to say that the common-law immunity rule is a defense to liability which Congress has imposed upon "any officer or other person," as in *Ex parte Virginia*, or upon "every person" as in this case.

The immunity which the Court today grants the judiciary is not necessary to preserve an independent judiciary. If the threat of civil action lies in the background of litigation, so the argument goes, judges will be reluctant to exercise the discretion and judgment inherent to their position and vital to the effective operation of the judiciary. We should, of course, not protect a member of the judiciary "who is in fact guilty of using his powers to vent his spleen upon others, or for any other personal motive not connected with the public good." *Gregoire v. Biddle*, 177 F. 2d 579, 581. To deny recovery to a person injured by the ruling of a judge acting for personal gain or out of personal motives would be "monstrous." *Ibid.* But, it is argued that absolute immunity is necessary to prevent the chilling effects of a judicial inquiry, or the threat of such inquiry, into whether, in fact, a judge has been unfaithful to his

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<sup>3</sup> The opinion in *Ex parte Virginia*, *supra*, did not mention *Bradley v. Fisher*, 80 U. S. 335, which held that a judge could not be held liable for causing the name of an attorney to be struck from the court rolls. But in *Bradley*, the action was not brought under any of the Civil Rights Acts.

oath of office. Thus, it is necessary to protect the guilty as well as the innocent.<sup>4</sup>

The doctrine of separation of powers is, of course, applicable only to the relations of coordinate branches of the same government, not to the relations between the branches of the Federal Government and those of the States. See *Baker v. Carr*, 369 U. S. 186, 210. Any argument that Congress could not impose liability on state judges for the deprivation of civil rights would thus have to be based upon the claim that doing so would violate the theory of division of powers between the Federal and State Governments. This claim has been foreclosed by the cases recognizing "that Congress has the power to enforce the provisions of the Fourteenth Amendment against those who carry a badge of authority of a State. . . ." *Monroe v. Pape*, 365 U. S. 167, 172. In terms of the power of Congress, I can see no difference between imposing liability on a state police officer (*Monroe v. Pape*, *supra*) and on a state judge. The question presented is not of constitutional dimension; it is solely a question of statutory interpretation.

The argument that the actions of public officials must not be subjected to judicial scrutiny because to do so would have an inhibiting effect on their work, is but a more sophisticated manner of saying "The King can do

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<sup>4</sup> Other justifications for the doctrine of absolute immunity have been advanced: (1) preventing threat of suit from influencing decision; (2) protecting judges from liability for honest mistakes; (3) relieving judges of the time and expense of defending suits; (4) removing an impediment to responsible men entering the judiciary; (5) necessity of finality; (6) appellate review is satisfactory remedy; (7) the judge's duty is to the public and not to the individual; (8) judicial self-protection; (9) separation of powers. See generally, Jennings, *Tort Liability of Administrative Officers*, 21 Minn. L. Rev. 263, 271-272 (1937).



no wrong." \* Chief Justice Cockburn long ago disposed of the argument that liability would deter judges:

"I cannot believe judges . . . would fail to discharge their duty faithfully and fearlessly according to their oaths and consciences . . . from any fear of exposing themselves to actions at law. I am persuaded that the number of such actions would be infinitely small and would be easily disposed of. While, on the other hand, I can easily conceive cases in which judicial opportunity might be so perverted and abused for the purpose of injustice as that, on sound principles, the authors of such wrong ought to be responsible to the parties wronged." *Dawkins v. Lord Paulet*, L. R. 5 Q. B. 94, 110 (C. J. Cockburn, dissenting).

This is not to say that a judge who makes an honest mistake should be subjected to civil liability. It is necessary to exempt judges from liability for the consequences of their honest mistakes. The judicial function involves an informed exercise of judgment. It is often necessary to choose between differing versions of fact, to reconcile opposing interests, and to decide closely contested issues. Decisions must often be made in the heat of trial. A vigorous and independent mind is needed to perform such delicate tasks. It would be unfair to require a judge to exercise his independent judgment and then to punish him for having exercised it in a manner which, in retrospect, was erroneous. Imposing liability

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\* Historically judicial immunity was a corollary to that theory. Since the King could do no wrong, the judges, his delegates for dispensing justice, "ought not to be drawn into questions for any supposed corruption [for this tends] to the slander of the justice of the King." *Floyd v. Barker*, 12 Co. Rep. 23, 25, 77 Eng. Rept. 1305 (Star Chamber 1607). Because the judges were the personal delegates of the King they should be answerable to him alone. *Randall v. Bingham*, 73 U. S. 523, 539.

for mistaken, though honest judicial acts, would curb the independent mind and spirit needed to perform judicial functions. Thus, a judge who sustains a conviction on what he forthrightly considers adequate evidence should not be subjected to liability when an appellate court decides that the evidence was not adequate. Nor should a judge who allows a conviction under what is later held an unconstitutional statute.

But that is far different from saying that a judge shall be immune from the consequences of any of his judicial actions, and that he shall not be liable for the knowing and intentional deprivation of a person's civil rights. What about the judge who conspires with local law enforcement officers to "railroad" a dissenter? What about the judge who knowingly turns a trial into a "kangaroo" court? Or one who intentionally flouts the Constitution in order to obtain a conviction? Congress, I think, concluded that the evils of allowing intentional, knowing deprivations of civil rights to go unredressed far outweighed the speculative inhibiting effects which might attend an inquiry into a judicial deprivation of civil rights.\*

The plight of the oppressed is indeed serious. Under *City of Greenwood v. Peacock*, 384 U. S. 809, the defendant cannot prevent a state court from depriving him of his civil rights by removing to a federal court. And under the rule announced today, the person cannot recover damages for the deprivation.

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\* A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing the judicial function. See, e. g., *Ex parte Virginia*, 100 U. S. 339; Harper & James, *Law of Torts* 1642, 1643 (1956). The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function. When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices.